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RECORDATION REQUESTED BY:  
SECURITY PACIFIC ESCROW, INC

~~Mukai, Ichiki, Raffetto, & MacMillan~~  
Kailua

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AFTER RECORDATION RETURN TO:  
SECURITY PACIFIC ESCROW, INC

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RETURN BY: MAIL ( ) PICKUP (✓)

DECLARATION OF COVENANTS, CONDITIONS AND

RESTRICTIONS FOR TIME SHARING OWNERSHIP

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DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR TIME  
SHARING OWNERSHIP

THIS DECLARATION, made this 5 day of August  
19 81 by Tropical Investments Company  
a Nevada general partnership  
whose residence (or principal place of business if not an  
individual) and post office address is 1590 Allen Street  
Reno Nevada  
hereinafter called the "Declarant";

W I T N E S S E T H :

WHEREAS, Declarant is the owner of legal title to or the purchaser under recorded Agreement of Sale covering that certain property more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Declarant proposes to transfer respective Time Share Ownership Estates (as hereinafter defined) in the Property, and in any additional condominium apartment (the "Annexation Property") in the same condominium project ("Project") as the Property, which Annexation Property may be made subject to the terms hereof from time to time by annexation as provided for herein, and such transfers will be to purchasers of time sharing ownership interests in the Property or Annexation Property, reserving to Declarant and its successors and assigns the Time Share Ownership Estates not so transferred, if any, together with the right to transfer all such Time Share Ownership Estates, and all such transfers shall be subject to the terms, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in this Declaration (as well as other provisions set forth or referred to in the instrument of transfer); and

WHEREAS, by this Declaration, Declarant intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration and improvement of the Property and, to the extent provided herein, any Annexation Property, and the interests therein conveyed or reserved, and for the payment of taxes, assessments, insurance premiums and other expenses pertaining thereto;

WHEREAS, this Declaration shall affect Declarant's interest in the Property, including Declarant's interest under said Agreement of Sale, if any, and, upon Declarant's acquisition of legal title to the Property, such title;

NOW, THEREFORE, in furtherance of such intent, Declarant hereby declares that the Property is and shall be held, transferred, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, limitations, restrictions, covenants, conditions, terms, exceptions, reservations, and provisions set forth in this

Declaration and in the By-Laws attached hereto as Exhibit "B" and made a part hereof ("By-Laws") as this Declaration and the By-Laws may from time to time be amended, and in such other rules and regulations as are instituted pursuant to the provisions of this Declaration and the By-Laws, all of which declarations, limitations, restrictions, covenants, conditions, terms, exceptions, reservations, and provisions are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the Property and each Time Share Ownership Estate therein. All such declarations, limitations, restrictions, covenants, conditions, exceptions, reservations, terms, and provisions shall constitute covenants running with the land (to wit the Property and each Time Share Ownership Estate therein) and equitable servitudes and liens, and shall be binding on and for the benefit of Declarant and each owner of a Time Share Ownership Estate in the Property and each such Estate and upon all parties having or acquiring any right, title, interest or estate in the Property, including without limitation the heirs, executors, administrators, and assigns of any such parties and all subsequent owners and lessees of all or any part of or any interest in the Property.

## ARTICLE I

### DEFINITIONS

In addition to other definitions provided for herein, as used herein the following terms shall have the following meanings:

1.1 "Apartment" means the space included as part of a condominium unit, if any, constituting the Property, as defined in the Master Declaration of Horizontal Property Regime.

1.1A "Association" means the Association of Time Share Estate Owners of the Property, an unincorporated association, as established pursuant to this instrument.

1.2 "Board" or "Board of Directors" means the Board of Directors of the Association.

1.3 "Budget" means the operating statement for the Property prepared according to paragraph 4.2(h)(i) of this Declaration by the Association or its delegee.

1.4 "Common Elements" means those elements, if any, designated as common elements and, if any, limited common elements in any Declaration of Horizontal Property Regime submitting the Property to a condominium, and amendments thereto.

1.5 "Common Furnishings" means all furniture, furnishings, appliances and other personal property from time to time owned or held by all Owners of Time Share Ownership Estates in the Property for their common use in connection with the Property.

1.6 "Convey" or "Conveyance" means transfer of legal title to real property, and in the case of leasehold property, includes assignment of a leasehold interest.

1.7 "Declarant" shall mean the person(s) named above as "Declarant", or any successor in interest to the rights of Declarant hereunder by an instrument executed by Declarant and recorded in the Bureau of Conveyances, State of Hawaii or, if the the Property is Land Court property, filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii.

1.8 "Declaration" means this instrument, as this instrument may be amended from time to time in the manner herein provided.

1.9 "Majority of Owners" means a Time Share Estate Owner or Owners owning in the aggregate more than fifty percent of the undivided interests comprising the Time Share Ownership Estates in the Property.

1.10 "Managing Agent" means the agent engaged for management of the Property in the manner provided in paragraph 4.3 hereof.

1.10A "Master Agreement of Sale" means any Agreement of Sale of Sub-Agreement of Sale (installment purchase contract) for the sale of all the Property to the Declarant, under which the vendee has the right to use and occupancy of the Property but the vendor retains legal title to the Property.

1.11 "Master Declaration" means the Declaration of Horizontal Property Regime, if any, described in Exhibit A to which the Property is subject and submitting the Property to a condominium, together with any By-Laws applicable thereto, or if the Property is a unit in a Planned Unit Development, such term shall mean the Master Declaration of Covenants, Conditions and Restrictions, if any, to which the Property is subject as a part of such Planned Unit Development, and By-Laws applicable thereto, if any.

1.12 "Master Association" means the association of owners, if any, established under the Master Declaration.

1.13 "Mortgagee" means the beneficiary of a recorded deed of trust or the holder of a recorded mortgage encumbering any Time Share Ownership Estate or the Property. "Mortgage" means a mortgage or deed of trust.

1.14 "Time Share Conveyance Document" means the document by which Declarant transfers legal title to a Time Share Ownership Estate (including assignment of a leasehold estate) in the Property, excluding, however, any instrument which (i) transfers the entire interest in the Property then held by Declarant or Declarant's successor, which expressly recites that it is not a Time Share Conveyance Document within the meaning of this Declaration, and that it is intended to substitute the grantee or assignee therein as Declarant hereunder, and which includes an express assignment of the rights of Declarant under this Declaration, or (ii) is a transfer of the Property free of this Declaration after termination of the time sharing plan hereunder of removal of the Property from such plan, or (iii) is an Agreement of Sale, which does not transfer legal title.

1.15 "Project" means the Horizontal Property Regime (Condominium) or Planned Unit Development, if any, established by the Master Declaration consisting of the land and all buildings, improvements, and structures thereon described in the Master Declaration.

1.16 "Property" means the Property submitted to this Declaration, as described in Exhibit A.

1.17 "Rules and Regulations" means the rules and regulations adopted and promulgated from time to time by the Association pursuant to paragraph 4.2(d) of this Declaration relating to the possession, use and enjoyment of the Property, and where the context permits or requires, shall include rules and regulations pursuant to the Master Declaration or By-Laws.

1.18 "Service Period" means a period or periods for maintenance, cleaning and repair of the Property, designated as provided for in paragraph 10.1 of the Declaration, and as described in paragraph 10.1A of this Declaration.

1.19 "Time Share Ownership Estate" means a separate estate owned in the Property, comprising the exclusive right of use of the Property during a Unit Week (as herein defined), together with an undivided percentage interest in the Apartment and in the common elements of the Project other than land (subject to the provisions of any applicable apartment lease, ground lease, apartment deed, or condominium conveyance document and, until satisfied, any Master Agreement of Sale and to which the Property is subject) and an undivided percentage leasehold interest in the land of the Project (subject as aforesaid), and together with a nonexclusive right to use the Property during any Service Period for maintenance and repair thereof. Time Share Ownership Estates shall be deemed to be created as of recordation of this Declaration, and shall be ownership interests in the ownership time sharing plan. The undivided percentage interests included in a Time Share Ownership Estate shall include legal interests in the case of Time Share Ownership Estates reserved to a Declarant who holds legal title to the Property or in the case of transfer to a Time Share Estate Owner of legal title to an undivided percentage interest in the Property, and also shall include equitable interests in case of Time Share Ownership Estates reserved to a Declarant who is purchasing the Property under an Agreement of Sale, or Time Share Ownership Estates sold to purchasers under an Agreement of Sale. The undivided percentage interest in the Apartment space corresponding to each Unit Week is stated in Exhibit C attached. The undivided percentage interest in the common elements other than land and the undivided percentage leasehold interest in the land are each determined for a corresponding Unit Week by multiplying the percentage for that Unit Week stated in Exhibit C by the undivided percentage interest stated in the Master Declaration to be the Apartment's common interest in the common elements of the Project.

1.20 "Time Share Estate Owner" or "Owner" means and includes (i) Declarant with respect to any Time Share Ownership Estate reserved to Declarant, and (ii) the grantee, grantee/assignee, or assignee named in each Time Share Conveyance Document transferring a Time Share Ownership Estate or the purchaser under any recorded Agreement of Sale for a Time Share

Ownership Estate who has right to possession of the Property during the Unit Week(s) covered by such Agreement of Sale, and the successors to such Owners; provided, however, that if any such grantee, grantee/assignee, or assignee ("Vendor") shall enter into an Agreement of Sale or any such purchaser shall enter any further Agreement of Sale, under which the vendee ("Vendee"), has rights to occupy the Property, then subject to the provisions of paragraph 10.4 below, such Vendor shall cease to be the Owner of such Time Share Ownership Estate for all purposes hereunder, and such Vendee shall become the Owner.

1.21 "Unit Week" shall mean a one (1) week period of use of the Property, annually recurring and commencing at 3 o'clock P.M. on a Friday of each year and terminating at 3 o'clock P.M. seven days later, so that the period of any particular Unit Week shall be identified by applying the formula in which the first period of use for Unit Week No. 1 commences at 3 o'clock P.M. on the first Friday of the calendar year in which this Declaration is recorded and Unit Week No. 1 terminates and Unit Week No. 2 commences at 3 o'clock P.M. on the second Friday of such year, and so on, except that Unit Week No. 52 shall terminate at the recurrence and commencement of Unit Week No. 1 on the first Friday of the next succeeding year, and the recurrence of Unit Week periods shall continue in such cycle, provided that all Unit Weeks shall end, terminate, and cease to recur at the same time as any ground lease, apartment lease, or condominium conveyance document to which the Property is subject shall expire, or upon such earlier termination thereof as may occur, unless extended pursuant to extension or renewal of such ground lease, apartment lease, or condominium conveyance document.

## ARTICLE II

### USE RIGHTS

2.1 Exclusive Use and Occupancy. Each Owner (including Declarant) shall have the exclusive right to occupy and use the Property and the Common Furnishings and the nonexclusive right to use and enjoy the Common Elements and the rights and easements appurtenant to the Property during such Owner's Unit Week or Weeks in the Property (and in the case of Declarant, during all Unit Weeks not previously transferred to other Owners) and to authorize others so to do, together with the nonexclusive right and obligation in common with all other Time Share Estate Owners of the Property to maintain and repair the Property during Service Periods (such nonexclusive right and obligation to be exercised through the Managing Agent, and if there be no appointed and acting Managing Agent, such right and obligation to maintain and repair the Property shall be exercised according to the direction of a majority of Owners). No Time Share Estate Owner shall occupy or use the Property during any Unit Week other than his Unit Week(s), unless expressly authorized by the Time Share Estate Owner entitled to occupy the Property during such Unit Week. Each Time Share Estate Owner shall keep the Property and Common Furnishings in good condition and repair during his Unit Week(s), vacate the Property at the expiration of his Unit Week(s), remove all persons and property therefrom, excluding only the Common Furnishings, leave the Property and Common Furnishings in good and sanitary condition and repair and otherwise comply with such reasonable checkin, checkout and other procedures and



regulations as may from time to time be contained in the Rules and Regulations. Any Time Share Estate Owner may permit the Property to be occupied by other persons for the purposes permitted by this Declaration during his Unit Week(s), but such Time Share Estate Owner shall be responsible for any loss, damage, or destruction of or to the Property or violation of this Declaration which occurs during such occupancy as if such Time Share Estate Owner were occupying the Property himself.

2.2 Failure to Vacate. If any Time Share Estate Owner fails to vacate the Property at the end of his Unit Week(s), or otherwise uses or occupies the Property during a period other than his Unit Week(s) without express permission to do so, or prevents another Time Share Estate Owner from using or occupying the Property during such other Owner's Unit Week(s), such Owner (the "Detaining Owner") shall (a) be subject to immediate removal, eviction or ejection from the Property wrongfully occupied; (b) be deemed to have waived any notice required by law with respect to any legal proceedings regarding removal, eviction or ejection (to the extent that such notices may be waived under Hawaii law); and (c) reimburse the Time Share Estate Owner otherwise entitled to use the Property for all damages, losses, costs and expenses incurred by him as a result of such conduct, including but not limited to costs of alternative accommodations and travel costs as well as court costs and reasonable attorneys' fees incurred in connection with removing, evicting or ejecting the Detaining Owner from the Property. If a Time Share Estate Owner by his intentional or negligent act renders the Property uninhabitable for any Unit Week subsequent to his, such Time Share Estate Owner shall be liable to the Time Share Estate Owner(s) of such successive Unit Week(s) just as if such Owner had refused to vacate the Property at the end of his Unit Week. For the purposes of this section, the act or negligence of a guest or any member of the Time Share Estate Owner's family shall be deemed to be the act of the Time Share Estate Owner.

2.3 Use Restrictions. All of the Restrictions on use of the Property and the Project as set forth or referred to in the Master Declaration, this Declaration, and any By-Laws, and any Apartment Deed, Ground Lease, Apartment/Ground Lease, or Condominium Conveyance Document, and, until satisfied, any Master Agreement of Sale applicable to the Property, shall apply to the Property and each Time Share Estate Owner shall comply with and hold his Time Share Ownership Estate subject to the provisions thereof; provided, however, that nothing in this provision shall be deemed to require compliance with any restriction, invalidation, or prohibition of time sharing as to the Property or in the Project of which the Property is a part, unless otherwise required by law. No Time Share Estate Owner shall paint, repaint, tile, paper or otherwise refinish or redecorate the inner surfaces of the walls, ceilings, floors, windows or doors bounding the Property or any improvements thereon, or remove, alter or replace any portion of the Common Furnishings or Common Elements, or construct, improve, alter, modify, remove or replace any part of the Property or improvements thereon, without the prior written consent of a Majority of Owners and, if required, of the Master Association. The right to perform all of the foregoing acts, if permissible, may be delegated to the Managing Agent by a Majority of Owners. The foregoing prohibitions, however, shall not modify or affect the obligation of each Time Share Estate Owner for the

prudent care and ordinary maintenance and upkeep of all property subject to his use. No animals, livestock, birds, fish, poultry, dogs, cats or household pets of any kind shall be kept in or upon the Property.

2.4 Maintenance of Property. The Time Share Estate Owners of the Property shall be jointly and severally responsible for the repair, upkeep and maintenance of the Property, any appurtenant Limited Common Elements and the Common Furnishings, all in accordance with the provisions of this Declaration and the By-Laws, and the Master Declaration and By-Laws.

2.4A Transfer of Period(s) for Maintenance.

Declarant hereby reserves the right to transfer to the Association, or to the Owners of the Time Share Ownership Estates in the Property, the Service Period(s) set aside for annual maintenance of the Property. The Association or such Owners shall accept such transfer and each Owner of a Time Share Ownership Estate in the Property, by the acceptance of the instrument whereby he acquires such Estate, also agrees to accept such transfer.

2.5 Transfer of Interest. Once a Time Share Ownership Estate in the Property has been transferred by recorded Time Share Conveyance Document or Agreement of Sale to a Time Share Estate Owner other than Declarant, no such Owner shall attempt, prior to termination of this Declaration or removal of the Property from this Declaration, to sell, convey, hypothecate or encumber either more or less than all of his interest in his Time Share Ownership Estate(s), except that a Time Share Estate Owner may permit (by exchange program or otherwise) another to use the Property during his Unit Week(s) subject to all applicable restrictions and requirements, and retain a vendor's interest in his Time Share Ownership Estate pursuant to any Agreement of Sale. Any sale, conveyance, hypothecation or encumbrance by any Time Share Estate Owner of his interest in a Time Share Ownership Estate (if permissible under this Declaration) shall operate to transfer to the new Owner of the Time Share Ownership Estate the interest of the prior Owner in all funds in the hands of the Managing Agent or the Association and in the Common Furnishings, without further instrument of transfer.

2.6 Separate Mortgages. Each Time Share Estate Owner shall have the right to mortgage or otherwise encumber all, but not less than all, of his Time Share Ownership Estate. No Time Share Estate Owner shall attempt to mortgage or otherwise encumber in any manner whatsoever the Property or any part thereof except his Time Share Ownership Estate, nor shall any Time Share Estate Owner have the right or authority so to do, except Declarant may have a mortgage on its interest in the Property prior to conveyance of any Time Share Ownership Estate to an Owner other than Declarant. Any Mortgage made after recordation of this Declaration shall be subordinate to all of the provisions of this Declaration and By-Laws attached hereto, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Time Share Estate Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise. Notwithstanding any other provision of this Declaration, no breach of the provisions herein contained, nor the enforcement of any lien created pursuant to the provisions hereof

shall defeat or render invalid the lien of any Mortgage of any Time Share Ownership Estate if such Mortgage is recorded in the Bureau of Conveyances of the State of Hawaii, or if the Property is Land Court property, filed in said Office of the Assistant Registrar and is given in good faith and for value.

2.7 Partition. No Time Share Estate Owner or other person or entity acquiring any right, title, lien or interest in the Property shall seek or obtain, through any legal procedures, judicial partition of the Property or his Time Share Ownership Estate or the sale of the Property in lieu of partition thereof, during any period in which any time sharing plan is in effect for the Property. If, however, any Time Share Ownership Estate is owned by two or more persons as tenants-in-common or as joint tenants or as community property, nothing herein contained shall prohibit a judicial sale of the Time Share Ownership Estate itself in lieu of partition thereof as between only such cotenants, joint tenants, or community property owners.

2.8 Protection of Interest. No Time Share Estate Owner shall, without the written consent and joinder of all other affected owners, permit his Time Share Ownership Estate, the Property, or the Common Furnishings to be subject to any lien (other than the liens of current nondelinquent real property taxes), claim or charge, the enforcement of which may result in (i) a sale or threatened sale of any greater interest in the Property than that of such Owner, or (ii) any interference in the use or enjoyment of the Property by any other Owner; provided that Declarant may have or place a mortgage or other encumbrance on the Property, subject to release of the mortgage lien upon conveyance of any Time Share Ownership Estate to an Owner other than Declarant. In the event of such a threatened sale, or should the use and enjoyment of the Property by any Owner be threatened by reason of any such lien, claim or charge against the Time Share Ownership Estate of any other Owner, or should proceedings be instituted to effect any such sale or interference, any Time Share Estate Owner acting on his own behalf or through the Association or Managing Agent, or the Association acting on behalf of any one or more Time Share Estate Owners (unless promptly indemnified to the acting party's satisfaction) may, but shall not be required to, pay or compromise the lien, claim or charge without inquiry into the proper amount or validity thereof and, in such event, the Time Share Estate Owner whose interest was subjected or threatened to be subjected to such lien, claim or charge shall promptly pay the amount so paid or expended to the Time Share Estate Owner, or Association, or Managing Agent, who shall have paid or compromised the lien, claim or charge, together with reasonable attorneys' fees and related costs incurred. No Time Share Estate Owner shall permit his interest in any funds from time to time in possession of the Association or Managing Agent to be subjected to any attachment, lien, claim or charge or other legal process and each Time Share Estate Owner shall promptly restore any funds held in respect of his Time Share Ownership Estate to the extent depleted by the reason of the assertion of any such attachment, lien, claim, charge or other legal process and shall reimburse the Association or Managing Agent for all reasonable attorneys' fees or other costs incurred in respect thereof.

2.9 Interrelationship of Interests. The interests comprising a Time Share Ownership Estate shall not be separately

transferable and none of such interests shall be fragmented or separated from each other in any way, and any Unit Week and undivided percentage interests comprising portions of a Time Share Ownership Estate shall be deemed to be conveyed or encumbered with each other, whether or not all are expressly mentioned in the instrument conveying or encumbering one of them, and the nonexclusive right and obligation of use of the Property during its Service Period(s) shall be deemed to be conveyed or encumbered with any of such interests.

### ARTICLE III

#### THE ASSOCIATION

3.1 Association. The Time Share Estate Owners shall be the Association. Declarant shall be the initial Association prior to transfer of any Time Share Ownership Estate to a person other than Declarant. Thereafter, Declarant and all other Owners shall constitute the Association.

3.2 Membership in Association and Master Association. Each Time Share Estate Owner (including Declarant as to any Time Share Ownership Estate owned by Declarant) shall automatically, upon becoming a Time Share Estate Owner, become a member of the Association and also of the Master Association and shall remain a member thereof until he ceases to be a Time Share Estate Owner.

3.3 Transfer of Membership. The membership of each Time Share Estate Owner in the Association is appurtenant to and inseparable from his ownership of a Time Share Ownership Estate and shall be automatically transferred upon any authorized transfer of the ownership of his Time Share Ownership Estate to any transferee, grantee or assignee and except as provided in this Declaration, such membership shall be nontransferable whether by gift, bequest, assignment or otherwise.

3.4 Voting. In accordance with the provisions of the By-Laws, each Time Share Estate Owner shall be entitled to a percentage vote for each Unit Week owned. Voting rights shall be as set forth in the By-Laws.

3.5 Board of Directors. The initial Board of Directors of the Association shall be the persons appointed by Declarant, which may include Declarant and/or principal officers and shareholders of Declarant. At the time of the first annual meeting of the Members of the Association, the Members of the Association (including Declarant) shall elect, in accordance with the By-Laws, a Board of Directors replacing the Board of Directors defined in the preceding sentence. From and after the first election of the Board of Directors by the Members of the Association and for so long as a majority of the voting power of the Association resides in Declarant, not less than 20 percent of the members of the Board of Directors shall be elected solely by the votes of Members of the Association other than Declarant.

## ARTICLE IV

MANAGEMENT

4.1 Powers and Duties Generally. The Association, acting alone, through its Board of Directors, its officers, or other duly authorized representatives, may, subject to the provisions of the By-Laws and this Declaration, exercise any or all rights and powers hereinafter enumerated and, except as specifically limited herein, all the rights and powers of an unincorporated association under the laws of the State of Hawaii.

4.2 Specific Powers and Duties of the Association. The management, maintenance and repair of the Property, the acquisition, maintenance, repair and replacement of the Common Furnishings and the administration of the affairs of Time Share Estate Owners with respect to occupancy of the Property and payment of expenses and costs enumerated in this Declaration shall be under the direction and control of the Association. The Association shall have the duty to maintain and repair the Property, to acquire, maintain, repair and replace Common Furnishings as needed, to administer the time sharing operation provided herein and to levy, collect and enforce the Assessments enumerated in this Declaration. The Association shall have the exclusive possession of the Property during the Service Period(s) designated for the Property. The Association shall have the power to do all things that are required to be done by it pursuant to this Declaration. Without limitation of the foregoing powers and duties, the Association is expressly authorized in its discretion and on behalf of the Time Share Estate Owners to do any or all of the following:

(a) Repair and Maintenance. To repair, maintain, repaint, furnish or refurnish the Property or any part thereof; to establish reserves for anticipated costs, including the costs of acquisition and replacement of Common Furnishings; to acquire and pay for materials, supplies, furniture, furnishings, labor or services which the Association deems necessary or proper for the maintenance and operation of the Property and the Common Furnishings, provided, however, that except for expenditures with respect to which Personal Charges (as defined in paragraph 5.5) are paid or payable, the Association shall not make any expenditure which exceeds available reserves and available insurance proceeds by more than \$500.00 unless a Majority of Owners consent by written notice to the Association after reasonable and adequate notice of the contemplated expenditure.

(b) Taxes and Assessments. To pay all taxes and assessments, including assessments by the Master Association and other costs affecting or relating to the Property or the Common Furnishings; and to discharge, contest or protest liens or charges affecting the Property.

(c) Utilities. To obtain and pay the costs of electrical, telephone, gas and other utility services for the Property.

(d) Rules and Regulations. To adopt, publish and enforce from time to time, Rules and Regulations relating to the possession, use and enjoyment of the Property which Rules and

Regulations shall be consistent with the provisions of this Declaration and the By-Laws hereto attached and with the provisions of the Master Declaration and By-Laws thereto attached.

(e) Legal and Accounting. To obtain and pay the cost of legal and accounting services necessary or proper in the maintenance and operation of the Property and the enforcement of this Declaration, the By-Laws and the Rules and Regulations.

(f) Insurance; Bonding. To the extent not provided for in insurance policies maintained by the Master Association, or, if desired by a Majority of Owners as additional insurance, to obtain and pay the cost of (i) insurance covering the Property and the Common Furnishings therein against loss or damage by fire and other hazards customarily covered by fire insurance policies written with extended coverage; (ii) public liabilities insurance, insuring against liability for personal injury or property damage resulting from an occurrence in, on or about the Property; and (iii) any other insurance, including, but not limited to, Workmen's Compensation Insurance, deemed necessary or desirable by the Association. The policies of insurance shall cover such risks, be written by such insurers and be in such amounts as the Association shall deem proper under the circumstances. The Association shall cause to be bonded the Managing Agent and any employee of either the Managing Agent or the Association who has charge of the Time Share Estate Owners' funds, and any other person required by law to be bonded.

(g) Levy and Collection of Assessments. To levy, collect and enforce Assessments against the Time Share Estate Owners in the manner provided in Articles V and VI hereof in order to pay the expenses of the time sharing operation and the fee of the Managing Agent; and to do all things necessary to enforce each Time Share Estate Owner's obligations hereunder.

(h) Financial Statements and Audit. To cause an external audit of operation of the Property by an independent public accountant to be conducted, if it is decided by a Majority of Owners that an audit is required in any year, and to cause the following statements for the Time Share Estate Owners to be regularly prepared and copies thereof distributed to each Time Share Estate Owner:

(i) A pro forma operating statement (the "Budget") of "Basic Expenses" (as that term is defined in paragraph 5.3 below) for the Property for each calendar year, which shall be distributed to Time Share Estate Owners not less than 60 days before the beginning of each calendar year, except the Budget shall be distributed as soon as reasonably possible for the calendar year in which this Declaration is recorded.

(ii) A balance sheet as of the last day of each calendar year starting with the calendar year in which this Declaration is recorded, and an operating statement for such calendar year shall be distributed within 90 days after the end of each such calendar year. The operating statement shall include a schedule of assessments received and receivable with respect to the Property.

(i) Master Association Voting. To exercise the vote that the Time Share Estate Owners are entitled to exercise in the Master Association as owners of the Property. In connection with the exercise of such vote, the Association shall, not less than 20 days prior to the annual and not less than 10 days prior to any special meeting of the Master Association, or as soon thereafter as the same is available, obtain the agenda for such meeting and such other information as may be available on the matters to be voted upon at such meeting and shall disseminate such agenda and information by mail to each Time Share Estate Owner together with a form of ballot prepared by the Association for return by each Time Share Estate Owner to the Association, which form shall request that each Time Share Estate Owner indicate to the Association the manner in which such Time Share Estate Owner desires the vote of the Owners to be exercised with respect to each matter upon which a vote is to be taken. The Association shall exercise the vote in that manner which is approved by a majority of Owners. If Time Share Estate Owners responding split evenly on any such matter, the Board of Directors shall be entitled to exercise the vote in the manner it sees fit. The Board of Directors shall be entitled to exercise the vote as it sees fit as to all matters which come before a meeting of the Master Association if, because of circumstances beyond the control of the Association, the Association shall not have had the time to implement the foregoing procedure. Each Time Share Estate Owner shall be deemed to have authorized the Association to act for him at any such meeting of the Master Association and, for this purpose, shall deliver to the Association a proxy authorizing the Association or its designee to act for such Time Share Estate Owner at any such meeting whenever requested so to do.

(j) Bank Accounts. All funds collected from Time Share Estate Owners pursuant to Article V hereof and all other amounts collected by the Association in connection with its duties provided herein shall be deposited as follows:

(i) All funds shall be deposited in a separate bank account (the "General Account") with a bank located in the State of Hawaii in which no other Association funds shall be deposited. The Association shall keep accurate books and records reflecting the amount of such account attributable to each Time Share Estate Owner. Funds deposited in such account may be used by the Association only for the purposes for which such funds have been collected.

(ii) Funds which the Association shall collect pursuant to Basic Assessments (as hereinafter defined) for Basic Expenses and Reserve Expenses (as hereinafter defined) shall, within 10 days after deposit in the General Account, be deposited in an interest bearing savings account with a bank or savings and loan association selected by the Association and the Association shall keep accurate books and records reflecting the amounts in such account. Funds deposited in such savings account shall be held in trust for use by the Association for Basic Expenses and Reserve Expenses by transfer to the General Account as required. Interest, if any, on the savings account shall be

credited to the Association and used to reduce the Owners' Assessments each year.

(k) **Statements of Status.** Upon the request of any Time Share Estate Owner, Mortgagee, prospective Mortgagee, purchaser or other prospective transferee of a Time Share Ownership Estate, to issue a written statement setting forth the amount in the General Account, and any savings account, and any amounts unpaid with respect to any Time Share Ownership Estate.

(l) **Cleaning and Maid Service.** To provide for cleaning, maid service, maintenance and repairs, during Service Periods and at other times as necessary, and to set check-in and check-out times for Owners to allow for the same.

(m) **Right of Entry.** The Association shall have the right and authority, during Service Periods and at any other reasonable time when the Property is not occupied, to enter the Property for the purpose of cleaning, maid service, painting, maintenance and repair. In addition, the Association shall have the right and authority to enter upon and within the Property at any reasonable time, whether or not during a Service Period and whether or not in the presence of a Time Share Estate Owner, for the purpose of (i) making emergency repairs therein, (ii) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful condition or activity being conducted or maintained in the Property, (iii) protecting property rights and welfare of the other Time Share Estate Owners, or (iv) for any other purpose reasonably related to the performance by the Association of its responsibilities under the terms of this Declaration. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use and/or enjoyment of the Time Share Estate Owner or other lawful occupant of the Property and shall be preceded by reasonable notice to the Time Share Estate Owner or occupant thereof whenever the circumstances permit.

(n) **Other Necessary Acts.** To do all other things or acts deemed by the Association to be necessary, desirable or appropriate for the operation and maintenance of the time interval operation.

(o) **Leasehold Property.** If the Property is leasehold, to negotiate with the lessor thereof with respect to the lease.

(p) **Delegation.** To delegate the authority and responsibilities of the Association hereunder to one or more agents, including but not limited to, a member of the Board or the Managing Agent.

#### 4.3 Authority and Duty to Engage Managing Agent.

The Association shall have the authority to engage and the obligation to use its best efforts to engage and maintain a reputable firm as the Managing Agent for the Property and the time sharing operation contemplated hereby pursuant to a written agreement (the "Management Agreement") meeting the requirements of this paragraph 4.3. Each Management Agreement shall:



(a) Authorize and obligate the Managing Agent to perform all the duties and obligations of the Association specified in paragraph 4.2 above, unless otherwise required by vote of a Majority of Owners; provided, however, that the Managing Agent may delegate its authority and responsibilities to one or more subagents for such periods and upon such terms at the Managing Agent deems proper, subject to the limitations set forth in Paragraph 4.4, below.

(b) Provide for a term of not more than one year subject to earlier termination upon not less than ten (10) days notice by the Association for cause.

(c) Provide that unless the Management Agreement shall have been terminated by the Association, the Managing Agent may resign only upon compliance with the following conditions:

(i) The Managing Agent shall have given at least 60 days prior written notice to the Association and to all Time Share Estate Owners; and

(ii) Prior to or at the expiration of the period of such notice (not less than 60 days) the Association shall have entered into a Management Agreement with another firm meeting the requirements of this paragraph 4.3. If at the end of the period specified in such notice the Association, despite reasonable efforts to do so, has not entered into such a Management Agreement, the resignation of the Managing Agent shall not be effective until such a new Management Agreement is entered into between the Association and a new management firm; and

(iii) On or before the effective date of the Managing Agent's resignation, the Managing Agent shall turn over all books and records relating to the management and operation of the Property and the time sharing operation to the successor Managing Agent, and shall cooperate in the transition of duties to the successor.

(d) Provide for compensation to be paid to the Managing Agent as authorized by a Majority of Owners or, if a Majority of Owners fail to agree, and the Association is unable to procure a reputable and experienced real estate management firm without a determination of compensation, then as authorized by the Board of Directors.

In the event that the first Managing Agent is the Declarant or an affiliate of (one controlling, controlled by, or under common control with) the Declarant, the Management Agreement shall not have a term longer than one year and shall be terminable by either party thereto upon sixty (60) days advance notice.

4.4 Limitation on Powers of The Association and the Managing Agent. Notwithstanding the powers of the Association as set forth in paragraphs 4.1 and 4.2; neither the Association (nor the Managing Agent as the delegee of the Association's powers and duties) shall enter into a contract with a third person or entity whereby such person or entity will furnish goods or

services for the time sharing operations for a term longer than one year unless authorized by a Majority of Owners, except for:

(a) A contract with a public utility company at the rates charged for the materials or services as regulated by the Public Utilities Commission of the State of Hawaii; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract the regulated rate.

(b) Prepaid casualty and/or liability insurance policies not to exceed three years duration provided that the policy permits shortrate cancellation by the insured.

4.5 Limited Liability. Neither the Association nor its Board of Directors nor the Managing Agent shall be responsible for the acts, omissions to act or conduct of any of the Time Share Estate Owners or for the breach of any of the obligations of any of the Time Share Estate Owners. No member of such Board shall be personally liable to any Owner, or such Owner's guests, tenants, or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, or the Managing Agent, and the Association shall indemnify each member of the Board against all costs, expenses and liabilities, including the amounts of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses, which may be incurred by or imposed on such member in connection with any claim, action, suit, proceeding, investigation or inquiry made, instituted or threatened in which such member may be involved as a party or otherwise by reason of being a director on the Board, or by reason of any past or future action taken or authorized or approved by or any omission to act as such director, whether or not such member continues to be a director at the time of the incurring or imposition of such costs, expenses or liabilities; provided, however, that such indemnity and prohibition against personal liability shall not apply to costs, expenses or liabilities relating to matters for which such member shall in such action, suit or proceeding be finally adjudged to be or shall be liable by reason of negligence, willful and wanton misconduct, or bad faith in the performance of such member's duties as a director.

## ARTICLE V

### ASSESSMENTS

#### 5.1 Creation of Personal Obligations For Assessments.

Each Owner (including Declarant) shall be obligated to the Association for the Basic Assessments, Special Assessments, and Personal Charges as hereinafter described in paragraphs 5.3, 5.4, and 5.5, respectively (all of which are sometimes herein individually and collectively called "Assessment(s)"), which shall be established, made and collected as hereinafter provided. The Assessments, together with interest thereon, if any, and costs and reasonable attorneys' fees for their collection, shall be the personal obligation of each Time Share Estate Owner at the time the Assessments become due and payable and shall be liens and charges in favor of the Association as agent for all of the Owners upon the Time Share Ownership Estate against which the Assessments or charges are made. The personal obligation for delinquent

Assessments shall not pass to successors in title unless expressly assumed by them. No Time Share Estate Owner may waive or otherwise avoid liability for the Assessments by nonuse of the Property or any part thereof or any abandonment thereof. Declarant shall, for the purposes of this Article V, be considered the owner of unsold Time Share Ownership Estates from and after the date the Time Share Conveyance Document or agreement of sale for the first Time Share Ownership Estate in the Property shall have been recorded, and not before such date.

5.2 Purpose of Assessments. Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Time Share Estate Owners, the improvement, operation and maintenance of the Property, to pay for the administration of the time sharing operation and reimbursement of expenses incurred by the Association and other expenditures incurred in the performance of the duties of the Association as set forth in this Declaration.

5.3 Basic Assessment. On a calendar year basis, an assessment (the "Basic Assessment") allocable to each Unit Week for that year shall be determined as of the first day of such calendar year by multiplying the "Basic Expenses" (as that term is hereinafter defined) for such calendar year by a percentage equal to the undivided percentage interest attributable to such Unit Week as set forth in Exhibit "C"; provided, however, that a Basic Assessment allocable to each Unit Week for the period of time between recordation of the Time Share Conveyance Document or agreement of sale for such Unit Week and the end of the calendar year in which such recordation occurs (the "startup period") shall be determined as of the date of such recordation by multiplying the anticipated Basic Expenses for such startup period by such percentage; and provided, further, that the Declarant shall have a right and option but not an obligation to assume, in lieu of Basic Assessments to the Owners (including Declarant), all of the actual expenses of the Property which would have been covered by the Basic Expenses, if the Declarant determines in its discretion that such assumption is more economical to it than paying Declarant's share of the Basic Expenses, and also a right and option but not an obligation to terminate such assumption upon such time as Declarant determines in its discretion that payment of Declarant's share of Basic Expenses is more economical to it, and notice of such assumption or termination of such assumption as appropriate shall be given by written notice to the other Owners, which notice shall be effective upon delivery or mailing thereof, postage prepaid, to the last known address of such Owners furnished by them to Declarant.

Upon the effective date (determined as stated in this subparagraph) of any notice of such assumption, the Owners of Time Share Ownership Estates in the Property other than Declarant shall not be responsible for Basic Assessments until the effective date (determined as stated in this subparagraph) of a notice of termination thereof, and upon such termination of assumption, each Owner including Declarant shall be responsible for such Owner's prorated Basic Assessment for the remainder of the applicable period in which such termination occurs, and shall be obligated to pay the same immediately upon the effective date of such termination.

(a) "Basic Expenses" means the aggregate amount of expenses set forth in the Budget being the estimated amount of the expenses to be incurred by the Association during the applicable period (i) for charges attributable to the Property including but not limited to real property taxes, ground lease rents, maintenance fees, and utility charges, and all other amounts for operating, managing, maintaining and repairing the Property and administering the time interval operation, (ii) to provide for reserves to ensure payment when due of the cost of capital expenditures relating to the repair of the Property and the repair and replacement of Common Furnishings, assessments by the Master Association, and for such other purposes as are required by good business practice (the "Reserve Expenses"), (iii) to provide for a fund to account for the possibility that some Assessments may not be paid on a current basis, (iv) to maintain the General Account at the level determined by the Association to be reasonable in order to meet anticipated expenses, and (v) to provide for the payment of the fee of the Managing Agent. Basic Expenses shall not include any expenses constituting a Personal Charge. Basic Expenses for any applicable calendar year shall not be in excess of 120 percent of Basic Expenses for the preceding calendar year (without regard to any reduction pursuant to subparagraph 5.3(b)) unless Time Share Estate Owners other than Declarant owning in the aggregate more than 50 percent of all Time Share Ownership Estates other than those owned by Declarant shall consent thereto by vote or written assent, or unless such excess is necessitated by actual charges for legitimate goods and services furnished, to be furnished or being furnished to the Association at the time the Budget is prepared for the coming year, and which are to be paid for out of such Budget. The Reserve Expenses portion of the Budget shall consist of specific items and amounts for which such Reserve Expenses are being collected.

(b) Reduction of Budget or Assessments; Refunds. If the Board shall determine at any time that the Budget is, or will be, in excess of the amounts needed to meet the Basic Expenses (other than Reserve Expenses) of the Project for the current calendar year, the Board shall have the authority, exercisable in its sole discretion, to cause to be prepared an estimate of the amount of such excess, which excess shall then be subtracted from the previously prepared Budget for the year to which such excess is applicable. The reduced total Budget shall then be reallocated among the appropriate Time Share Estate Owners as provided above in this Paragraph 5.3. No Time Share Estate Owner shall, by reason of such reduction, be entitled to a refund of all or any portion of any Basic Assessment previously paid. Each Time Share Estate Owner agrees by accepting such Estate that any amount assessed and collected in excess of the amount required to meet the Basic Expenses (other than Reserve Expenses) shall be applied to reduce the amount assessed to meet the Basic Expenses for the next succeeding fiscal year or to offset any Special Assessments made as of the date of such excess collection. Any reduction in the Budget, as provided herein, shall not relieve any Time Share Estate Owner from his obligation to pay any past-due Assessment.

5.4 Special Assessments. If the Basic Assessment with respect to any Time Share Ownership Estate is, or will become, inadequate to meet all expenses incurred by the Association hereunder (other than for items constituting Personal Charges) for any reason, including nonpayment by any Time Share

Estate Owner of Assessments on a current basis, the Association shall immediately determine the approximate amount of such inadequacy, prepare and distribute a supplemental budget and levy against each Time Share Estate Owner a special assessment (the "Special Assessment") in an amount sufficient to provide for such inadequacy. Subject to the limitations of Paragraph 4.2(a), the Association shall also levy a Special Assessment against the Time Share Estate Owners to pay for the costs (in excess of amounts collected for reserve expenses attributable to the Time Share Ownership Estate and any available insurance proceeds) to repair any damage to the Property or to repair or replace any Common Furnishings located therein as necessitated by general wear and tear, obsolescence, or other circumstances not relating to the acts or omissions to act of a Time Share Estate Owner or persons occupying the Property through him. Any Special Assessment shall be payable in one lump sum or periodically, as determined by the Association and shall be payable within 15 days after receipt of a statement therefor.

5.5 Personal Charges. The term "Personal Charges" means any expense resulting from any act or omission of an Owner or other person occupying the Property during the Unit Weeks of an Owner. Personal Charges include, among others (i) the cost of long distance telephone charges or telephone message charges, food, beverages, sports supplies, optional maid service and other special services or supplies attributable to occupancy of the Property during such Unit Weeks, (ii) the cost to repair any damage to the Property or to repair or replace any Common Furnishings necessary because of loss or damage occurring during such Unit Weeks, and (iii) the cost to satisfy any expense to any of the other Time Share Estate Owners due to any intentional or negligent act or omission of such Owner, his family, tenants, or guests or resulting from the breach by such Owner of any provision of the Master Declaration and By-Laws, this Declaration, the By-Laws or the Rules and Regulations thereunder. Such Personal Charges shall be paid by each Time Share Estate Owner as follows:

(a) If the Association is able to determine the amount of Personal Charges at the time of checkout, such Personal Charges shall be payable upon checkout.

(b) Personal Charges which are not ascertainable as provided in subparagraph (a), above, shall be payable within fifteen (15) days after receipt of a statement therefor.

5.6 Payment of Assessments and Personal Charges. Unless otherwise approved by a Majority of Owners, the Basic Assessment for each Unit Week for each full calendar year shall be paid on January first of each such year, whether or not separate notice of the due date and obligation to pay such Basic Assessment is given, and the Basic Assessment for each Unit Week for the startup period defined in paragraph 5.3 shall be paid (whether or not separate notice thereof is given) upon the first day of such startup period, which shall be the date of closing of the purchase of the Time Share Ownership Estate with respect to which such Assessment is payable; subject to Declarant's right to assume actual Property expenses pursuant to the provisions of paragraph 5.3 hereinabove. All Special Assessments shall be paid by each Time Share Estate Owner within 15 days after notice is given that they are due. All Personal Charges shall be paid as provided in

paragraph 5.5 hereof. Wherever it is provided that an Assessment or Personal Charge shall be payable within a certain time after notice thereof, such notice shall be sent and shall be deemed received in accordance with paragraph 10.3 hereof.

5.7 Late Charges and Interest; Collection from Tenants. If an Owner fails to pay any Basic Assessment or installment thereof within fifteen (15) days after it is due and payable, or fails to pay any Personal Charge or any Assessment other than a Basic Assessment within thirty (30) days after it is due and payable, such Owner shall be liable for and shall pay a reasonable late charge, not to exceed \$15, for the cost of extra handling and shall be liable for and shall pay simple interest on the amount delinquent at the rate of twelve percent (12%) per annum, from the date upon which such Assessment or Charge was due and payable; provided, however, that if any provision in this paragraph should be found to contravene any usury law of the State of Hawaii, the Association's right to interest shall not be barred or lost, but shall automatically be reduced to the legal amount permissible under such law and this provision shall not be void but shall be effective with respect to such reduced amount, if any. The Association shall have the right to demand and collect, without prior notice to any Owner, the delinquent amount owed by an Owner for assessments and charges, from any person who leases or rents the Property for any period from such delinquent Owner, out of the rents and other amounts owed on account of such lease or rental by such person to the delinquent Owner, up to the lesser of the rent or other amounts owed by such person or the delinquent amount, and any such collection is agreed by the Owner to be valid payment by such person of the rent or other amount owed by such person.

## ARTICLE VI

### Enforcement of Restrictions

6.1 In General. The Association shall have full power and authority to enforce compliance with the Declaration, the By-Laws and the Rules and Regulations in any manner provided for by law or in equity, including, without limitation, the right to enforce the provisions of the Declaration, the By-Laws and the Rules and Regulations, to enforce the liens provided for herein and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for a Time Share Estate Owner and the right to take possession of the Time Share Ownership Estate of any Owner in the manner provided for by law. In the event the Association shall employ an attorney to enforce the provisions of this Declaration, the By-Laws or the Rules and Regulations against any Time Share Estate Owner, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other amounts due as provided for herein. Except as otherwise provided for Basic and Special Assessments and Personal Charges, all sums payable hereunder by a Time Share Estate Owner shall bear interest at 10% per annum from the due date, or if advanced or incurred by the Association, or any other Time Share Estate Owner pursuant to authorization contained in this Declaration, within 10 days after repayment is requested. All enforcement powers of the Association shall be cumulative.

6.2 Certain Specific Enforcement Powers. In amplification of, and not in limitation of, the general powers specified in Paragraph 6.1, above, the Association shall have the following rights and powers:

(a) Suspension of Privileges. If any Time Share Estate Owner shall be in breach of this Declaration, the By-Laws or the Rules and Regulations, including but not limited to the failure of such Time Share Estate Owner to pay any Assessment on or before the due date thereof, subject to the limitations hereinafter in this subparagraph 6.2(a) set forth, the Association may suspend the Time Share Estate Owner's right to occupy the Property during his Unit Week(s) and the right of such Time Share Estate Owner to participate in any vote or other determination provided for herein. If such suspension of privileges is based on any act or omission other than the failure of a Time Share Estate Owner to pay Assessments or any other amounts due hereunder when due, no such suspension shall be made except after a meeting of the Board of Directors of the Association at which a quorum of the Board is present, duly called and held for such purpose in the manner as provided in the By-Laws for the noticing, calling and holding of a special meeting of the Board. Written notice of such meeting shall be given to the Time Share Estate Owner whose privileges are being sought to be suspended at least 10 days prior to the holding of such meeting. Such Time Share Estate Owner shall be entitled to appear at such meeting and present his case as to why his privileges should not be suspended. The decision as to whether such privileges should be suspended shall be made by a majority of the members of the Board present at such meeting.

(b) Enforcement by Lien. The Association shall have a secured lien, in the nature of a Mortgage with private power of sale on each Time Share Ownership Estate as security for the prompt and faithful performance of each Time Share Estate Owner's obligations under this Declaration, the By-Laws and the Rules and Regulations and the payment of costs of enforcement and reasonable attorneys' fees; provided, however, that as against any transferee or beneficiary of a Time Share Estate Owner's interest (other than Declarant) who acquires such interest by transfer instrument for valuable consideration and accepts such interest without notice of default in the payment or performance secured, no such lien shall have priority over such transfer with respect to past-due payment or performance in default at the time of recording such transfer instrument, except to the extent that notice of default in the payment or performance has been given at the time of recording such transfer instrument, by the prior recording of a notice of lien recorded within the immediately preceding 24 calendar months in the Bureau of Conveyances, State of Hawaii, or if the Property is Land Court property, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, which notice of lien describes the Time Share Ownership Estate affected and sets forth the name of the record Time Share Estate Owner thereof and recites that the particular payment or performance is or may be in default. The purchaser at any foreclosure sale shall obtain title subject to the provisions of this Declaration. The Association may bid at the foreclosure sale and may hold, lease, mortgage or convey any Time Share Ownership Estate acquired at such sale.

6.3 Subordination to Certain Mortgages. The lien provided for herein shall be prior to all encumbrances made by a Time Share Estate Owner or imposed by legal process upon any Time Share Estate Owner except taxes, bonds, assessments and other levies, which by law, are prior thereto, and except any lien lawfully imposed by the Master Association pursuant to the Master Declaration authorization therefor, whether the claim of lien provided for herein is recorded prior or subsequent to any such encumbrances, and except that the lien provided for herein shall be subordinate to the lien of (a) any first Mortgage in favor of any Mortgagee, including Declarant or any affiliate of Declarant, and (b) any second Mortgage in favor of Declarant, provided such first or second Mortgage is made in good faith for value and recorded in the Bureau of Conveyances, State of Hawaii, or if the Property is Land Court property, is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, prior to the recordation of a claim of lien hereunder. The sale or transfer of any Time Share Ownership Estate shall not defeat or affect the lien provided for herein; provided, however, that the sale or transfer of any Time Share Ownership Estate pursuant to a foreclosure of the lien provided for herein or under a Mortgage thereon or any proceeding in lieu of such foreclosure shall have such effect on the lien provided for herein as prescribed by law. No such sale or transfer pursuant to foreclosure or otherwise shall relieve such Time Share Ownership Estate or the purchaser thereof from liability for any Assessments thereafter becoming due or from the lien thereof.

## ARTICLE VII

### ANNEXATION AND REMOVAL

7.1 Annexation. The Owner or Owners (including Declarant) of all Time Share Ownership Estates in the Property may, pursuant to the following provision of this paragraph from time to time and in the sole discretion of such Owner or Owners, annex to the Property any unit (the "Annexation Property") in the Project of which the Property is a part, subject to approval and joinder in such annexation by the owner of legal title to or the purchaser under Agreement of Sale covering such Annexation Property.

(a) The annexation of any such Annexation Property shall be effective upon recording in the Bureau of Conveyances of the State of Hawaii and if the Property or Annexation Property is Land Court property, filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, of a Supplemental Declaration (i) describing the property to be annexed; (ii) setting forth such additional limitations, restrictions, covenants and conditions as are applicable to such Annexation Property; and (iii) declaring the Annexation Property to be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Declaration and any Supplemental Declarations thereto.

(b) Subject to any such Supplemental Declarations and the provisions of this Article VII, the property so annexed shall be deemed to be subject to the terms of this Declaration; provided, however, that the property so annexed shall not become



liable to assessments for debts of the Association already incurred prior to the date of such annexation.

(c) No Supplemental Declaration shall affect any existing Time Share Ownership Estate, and no Owner of a Time Share Ownership Estate in the Property originally submitted to this Declaration (Property described in Exhibit "A" hereto) shall acquire any interest in any other property by reason of the recording of a Supplemental Declaration, nor shall any Owner of a Time Share Ownership Estate in any Annexation Property acquire by the recording of any Supplemental Declaration any interest in the Property submitted hereto originally, or by any other Supplemental Declaration. Upon any annexation, the total amount of votes shall be increased by one hundred percent (100%) for each additional unit annexed to this Declaration. For example, if by annexation, one additional unit is made subject to this Declaration, the total amount of votes apportioned in the manner provided in paragraph 3.4 would be two hundred percent (200%). After annexation, each Time Share Estate Owner shall retain and exercise the same percentage vote (as determined pursuant to paragraph 3.4) with respect to his Unit Week(s) as before annexation, provided that his vote shall upon annexation be a smaller proportion of the total votes in the Association than before annexation. Upon any annexation, each Time Share Estate Owner shall remain liable for and shall be obligated to pay for the Basic Assessments, Special Assessments, and Personal Charges attributable to the Property or Annexation Property in which such Owner's Time Share Ownership Estate is established, and shall be obligated to pay such Owner's proportionate share of the Managing Agent's fee and other expenses common to the Property and any Annexation Property which is not already apportioned between the Property and Annexation Property by the Master Association, but such Owner shall not be responsible or liable for such Assessments or Charges attributable solely to property other than the Property or Annexation Property in which his Time Share Ownership Estate is established. For purposes of this paragraph, an Owner's said proportionate share of the said common expenses after annexation shall be determined by (1) computing the same proportion of such common expenses as the common interest attributable to the unit in which such Owner's Time Share Ownership Estate is established bears to the aggregate common interest attributable to all the units subject to this Declaration, and (2) multiplying such proportion by the undivided percentage attributable to such Owner's Unit Week(s) as set forth in Exhibit "C". Such proportionate share shall be deemed an Assessment of such Owner, collectible from such Owner as a Basic Assessment or, if the Board or Managing Agent deems it necessary, as a Special Assessment, according to the applicable provisions of this Declaration.

(d) Nothing herein or in any amendment hereto shall be deemed to be a representation, warranty or commitment that Declarant will commit or subject to the Declaration any properties it may now own or hereafter acquire other than the Property described in Exhibit "A".

(e) The right to annex real property as described above shall expire with respect to any real property not annexed as of the 20th anniversary of the date of execution of this Declaration.

7.2 Removal. In the event Declarant shall desire that any Property in which no Time Share Ownership Estates have theretofore been sold or conveyed be removed from the time sharing program provided for herein and the requirements, obligations and restrictions set forth in this Declaration, Declarant may record in the Bureau of Conveyances, State of Hawaii, or file in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as appropriate, a document entitled "Termination of Time Share Ownership Estate Status," duly executed and acknowledged, stating that said Property is no longer subject to the provisions of this Declaration. All of the Owners may remove the Property from this Declaration by an instrument to that effect, duly recorded or filed, provided that the holders of all liens affecting the Property consent thereto, by written consents duly recorded or filed. Upon recordation of said document or instrument, the Property described therein shall be removed from the time sharing program. Upon such removal, the Property ceases to be subject to this Declaration, and is deemed to be owned by Declarant in the event no Time Share Ownership Estates have been conveyed or sold, or to be owned as tenants in common by the Owners in proportion to their respective undivided percentage interests if such Estates have been conveyed or sold.

## ARTICLE VIII

### DAMAGE OR DESTRUCTION

8.1 Master Declaration Controls. In the event of any conflict between the provisions hereof and the provisions of the Master Declaration, the latter provisions shall control as to all matters provided therein relating to the Property or the Common Elements.

8.2 Damage or Destruction to Property or Common Furnishings. Subject to the Master Declaration and By-Laws, in the event of any damage or destruction to the Property or the Common Furnishings therein, other than by ordinary wear and tear, the Association shall, subject to the provisions of Paragraph 4.2(a) hereof, forthwith cause such damage to be repaired and shall use any available insurance proceeds for such purpose. If the damage is not covered by insurance or the available insurance proceeds are insufficient, and the Property is being repaired or rebuilt pursuant to the Master Declaration, the Association shall levy a Special Assessment against the Time Share Estate Owners of the Property, proportionately according to their respective undivided percentage interests as stated in Exhibit C, for the amount required to meet the cost of such repair or restorations, as provided in Paragraph 5.4, above; provided, however, that if the damage or destruction was caused by the intentional or negligent act or omission of a Time Share Estate Owner, his family, guests or invitees, the cost of such repair or the amount of such deficiency shall be a Personal Charge and shall be paid by such Time Share Estate Owner as provided in Paragraph 5.5, above.

8.3 Excess Insurance Proceeds. Any excess insurance proceeds over the cost of repair or restoration or any insurance proceeds available pursuant to the Master Declaration or this Declaration shall be distributed pro rata to the Time Share Estate Owners and their Mortgagees as their interests may appear.

## ARTICLE IX

CONDEMNATION

9.1 Master Declaration Controls. The provisions of the Master Declaration shall apply and control in the event of any condemnation of the Property.

9.2 Allocation of Condemnation Award. In the event any condemnation award shall, pursuant to the Master Declaration, be payable with respect to the Property, the same shall be payable to the Owners thereof in the proportion of their respective undivided percentage interests in the Property attributable in the aggregate to the Unit Week(s) owned.

## ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Amendment. This Declaration may be amended as follows:

Except as otherwise provided by law, by a vote of the Owners in interest (including Declarant) of 75 percent of the undivided interests constituting the Time Share Ownership Estates in the Property; provided, however, that Declarant expressly reserves the right to amend this Declaration for the purpose of designating one or more Service Periods as described in Paragraph 10.1A hereof at any time before or in connection with recordation of the Time Share Conveyance Document or Agreement of Sale by which Declarant transfers the first Time Share Ownership Estate in the Property; and provided, further, that no such amendment may affect or alter any contractual right of a purchaser to the Time Share Ownership Estate being purchased, or the right of any Time Share Estate Owner to occupy the Property exclusively for his Unit Week(s) and to use and enjoy the Common Elements and the rights and easements appurtenant to the Property during his Unit Week(s) unless such Time Share Estate Owner shall expressly so consent. Subject to the foregoing provisions, any amendment shall be binding upon every Time Share Estate Owner and every Time Share Ownership Estate whether the burdens thereon are increased or decreased. Any amendment authorized hereby shall be evidenced by an instrument in writing signed and acknowledged by Declarant, if amendment is made prior to recording the first Time Share Conveyance Document or Agreement of Sale in the time sharing operation of the Property, or is made to designate a Service Period or Service Periods for the Property, and thereafter, any amendment shall be signed by any two officers of the Association, which amendment shall be effective upon recording in the Bureau of Conveyances in the State of Hawaii or filing in the said Office of the Assistant Registrar, as may be required by law to effect such amendment.

10.1A Designation of Service Period. Prior to or in connection with recording in the Bureau of Conveyances of the State of Hawaii (or filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as applicable), the Time Share Conveyance Document or Agreement of Sale by which Declarant transfers the first Time Share Ownership

Estate in the Property, the Declarant shall designate by amendment to this Declaration one or more Service Periods for the Property, if such Service Period(s) are to be different from the one(s) set forth in Exhibit C. The Service Period(s) so designated shall consist of not less than five (5) days during each year. Such days may be, but need not be, consecutive. In the absence of any such amendment, the Service Period(s) for the Property shall be as set forth in Exhibit C.

10.2 Termination. This Declaration shall remain in effect until the expiration or sooner termination of the Ground Lease, Apartment/Ground Lease, or ground lease portion of the Condominium Conveyance Document, if any, described in Exhibit "A" or any extension period thereof, unless prior to expiration of the original period or any such extension period, an amendment hereto is recorded terminating this Declaration at a different time, or until the Property and all Annexation Property are removed from this Declaration.

10.3 Notices. Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given when delivered personally or 72 hours after deposit in the United States Mail, postage prepaid, addressed to a Time Share Estate Owner at the last address such Owner designates to the Association for delivery of notices, or in the event of no such designation, at such Time Share Estate Owner's last known address, or if there be none, at the address of the Property. Notices to the Association shall be addressed to the address designated by the Association in a written notice to all Time Share Estate Owners or in a recorded notice of change of such address. Notices to the Managing Agent shall be addressed to the address designated by the Managing Agent in a written notice to all Time Share Estate Owners or in a recorded Notice of such change of address.

10.4 Notification of Transfer of Time Share Ownership. No later than five days after the sale or transfer of any Time Share Ownership Estate under circumstances whereby the transferee becomes the Owner thereof, including a sale by Agreement of Sale or transfer of a Vendee's interest under an Agreement of Sale, the transferor shall notify the Association in writing of such sale or transfer. Such notice shall set forth: (i) the name and address of the transferee and transferor; (ii) the Unit Week(s) and undivided interest comprising the Time Share Ownership Estate being transferred; and (iii) the date of the transfer. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as a Time Share Estate Owner may be recognized by the Association. Prior to receipt of any such notification by the Association or the Managing Agent, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to such transferee's transferor.

10.5 Severability; Rule against Perpetuities. If any provision of this Declaration, or any section, sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Declaration and of the application of such provision, sentence, clause, phrase or word and any other

circumstances shall not be affected thereby. If any provision of this Declaration would violate the Rule against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provisions shall be deemed to remain in effect only for the maximum permissible period permitted by law or until 21 years after the death of the last survivor of the children of Senator Edward M. Kennedy of Massachusetts born and alive at his death.

10.6 Successors. The provisions of this Declaration shall be binding upon all parties having or acquiring any Time Share Ownership Estates or any right, title or interest therein and shall be for the benefit of each Time Share Estate Owner and his heirs, successors and assigns. Each Time Share Estate Owner (including Declarant) shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to his Time Share Ownership Estate upon ceasing to own such Time Share Ownership Estate and paying all sums and performing all obligations hereunder imposed on him up to the time his ownership interest terminated.

10.7 Violation or Nuisance. Every act or omission which violates any provision of this Declaration and By-Laws, or of the Master Declaration and By-Laws, or the Rules and Regulations adapted pursuant to any of the same, is hereby declared to be a nuisance and may be enjoined or abated whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Time Share Estate Owner.

10.8 Interpretation. The captions of the Articles and Paragraphs hereof are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Declaration. As used herein the singular shall include the plural and the masculine shall include the feminine and neuter.

10.9 No Waiver. The failure to enforce any provision of this Declaration shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

10.10 Service of Process. Process may be served upon any member of the Board of Directors of the Association.

10.11 Master Declaration Controls. In addition to any other provision herein stating that the Master Declaration controls in a conflict with certain terms of this Declaration, it is hereby provided that the Master Declaration shall control in the event of any conflict between any term of this Declaration and any term of the Master Declaration.

10.12 Restrictions and Prohibitions on Time Sharing. Notwithstanding any other provision herein, nothing herein or in the By-Laws attached hereto shall be deemed to require compliance with any restriction, invalidation, or prohibition on time sharing for the Property unless otherwise required by law.

IN WITNESS WHEREOF, the Declarant has hereunto

caused these presents to be executed this 5th day of  
AUGUST 1981.

TROPICAL INVESTMENTS COMPANY

By Frederic J. Oate  
Its GENERAL PARTNER

By Wang  
Its GENERAL PARTNER

STATE OF NEVADA )  
 ) SS  
 COUNTY OF WASHOE )

On this 5th day of AUGUST, 1981, before me appeared FRED L. OATS & GARRY JACKSON, to me personally known, who, being by me duly sworn, did say that ~~they~~<sup>she</sup> ~~is~~<sup>are</sup> a general partner of TROPICAL INVESTMENTS COMPANY, a Nevada General partnership, and that said instrument was signed in behalf of said partnership by authority of its partners, and said FRED L. OATS & GARRY JACKSON acknowledged the instrument to be the free act and deed of said partnership.

Donna J. Ellis  
 Notary Public, State of  
 DONNA J. ELLIS  
 Notary Public - State of Nevada  
 My commission expires:  
 Appointed & Recorded in Washoe County  
 MY APPOINTMENT EXPIRES JULY 25, 1985

EXHIBIT "A"  
TO TIME SHARE DECLARATION

Property One:

That certain condominium estate covered by (1) that certain Apartment Deed dated August 9, 1979, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13930, Page 34, being a mesne conveyance of items FIRST and SECOND hereinbelow described, the original Apartment Deed having been dated August 31, 1973, and recorded in the Bureau of Conveyances of the State of Hawaii in Book 9534, Page 100, and by (2) that certain Ground Lease dated August 31, 1973, for a term commencing August 31, 1973 to December 31, 2031, recorded in the Bureau of Conveyances, State of Hawaii, in Book 9534, Page 92, demising item THIRD hereinbelow described, said condominium estate comprising said items FIRST, SECOND, and THIRD being more particularly described as follows:

FIRST: Apartment No. G-9, of that certain Condominium Project known as "The Kuleana II", established by Declaration of Horizontal Property Regime dated April 17, 1973, recorded in the Bureau of Conveyances, State of Hawaii, in Book 9131, Page 253, as amended, and as shown on Condominium Map No. 277, as amended.

Together with all easements appurtenant to said apartment as provided for in the said Declaration of Horizontal Property Regime as amended, said Condominium Map No. 277 as amended, and/or said Apartment Deed.

SECOND: An undivided 1.0 percent interest in all common elements of the said Kuleana II Project other than land as established for said Apartment by the Declaration of Horizontal Property Regime, as amended, or such other percentage interest as may be established for said Apartment by any amendment of the Declaration of Horizontal Property Regime, as tenant in common with the other owners and tenants thereof.

Together with all easements appurtenant to said common elements as provided for in the said Declaration of Horizontal Property Regime as amended, said Condominium Map as amended, and/or said Apartment Deed.

THIRD: An undivided 1.0 percent leasehold interest in and to the land of the said Kuleana II Project or such other percentage interest as may be established for such Apartment by any amendment of the Declaration of Horizontal Property Regime, as tenant in common with the other owners and tenants of said land.

Together with a nonexclusive right to use the common elements in Kuleana I (Phase I of the Kuleana condominium project), to the same extent and subject to the same limitations as are imposed upon an owner of a condominium apartment in said Kuleana I, as provided for in that certain Declaration Pertaining to Merger of Increments in a Condominium Project dated April 19, 1973, recorded in Book 9123, Page 121.

12/8/81/b



Subject as to said undivided interests to the restriction that they may not be transferred or assigned separately and apart from each other or from the apartment hereinabove described, and subject to the condition that said apartment and undivided interests cannot be separated from the Ground Lease mentioned above.

SUBJECT, HOWEVER, as to FIRST, SECOND and THIRD, and said right to use Kuleana I common elements, to the following:

1. The terms, covenants, conditions, easements, exceptions, reservations, restrictions, encumbrances, and provisions described in the said Condominium Map and the Declaration of Horizontal Property Regime and By-Laws attached thereto, as the same may be amended from time to time, and any rules and regulations adopted pursuant thereto.

2. To all exclusive and nonexclusive easements appurtenant to the common elements, the limited common elements, and all other apartments in said Kuleana I and Kuleana II Condominium Projects.

3. The terms, covenants, conditions and provisions of said Apartment Deed and Ground Lease.

Property Two:

That certain condominium estate covered by (1) that certain Apartment Deed dated August 29, 1978, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13116, Page 453, being a mesne conveyance of items FIRST and SECOND hereinbelow described, the original Apartment Deed having been dated December 31, 1973, and recorded in the Bureau of Conveyances of the State of Hawaii in Book 9674, Page 356, and by (2) that certain Ground Lease dated December 31, 1973, for a term commencing December 31, 1973 to December 31, 2031, recorded in the Bureau of Conveyances, State of Hawaii, in Book 9674, Page 349, demising item THIRD hereinbelow described, said condominium estate comprising said items FIRST, SECOND, and THIRD being more particularly described as follows:

FIRST: Apartment No. G-3, of that certain Condominium Project known as "The Kuleana II", established by Declaration of Horizontal Property Regime dated April 17, 1973, recorded in the Bureau of Conveyances, State of Hawaii, in Book 9131, Page 253, as amended, and as shown on Condominium Map No. 277, as amended.

Together with all easements appurtenant to said apartment as provided for in the said Declaration of Horizontal Property Regime as amended, said Condominium Map No. 277 as amended, and/or said Apartment Deed.

SECOND: An undivided 1.0 percent interest in all common elements of the said Kuleana II Project other than land as established for said Apartment by the Declaration of Horizontal Property Regime, as amended, or such other percentage interest as may be established for said Apartment

by any amendment of the Declaration of Horizontal Property Regime, as tenant in common with the other owners and tenants thereof.

Together with all easements appurtenant to said common elements as provided for in the said Declaration of Horizontal Property Regime as amended, said Condominium Map as amended, and/or said Apartment Deed.

THIRD: An undivided 1.0 percent leasehold interest in and to the land of the said Kuleana II Project or such other percentage interest as may be established for such Apartment by any amendment of the Declaration of Horizontal Property Regime, as tenant in common with the other owners and tenants of said land.

Together with a nonexclusive right to use the common elements in Kuleana I (Phase I of the Kuleana condominium project), to the same extent and subject to the same limitations as are imposed upon an owner of a condominium apartment in said Kuleana I, as provided for in that certain Declaration Pertaining to Merger of Increments in a Condominium Project dated April 19, 1973, recorded in Book 9123, Page 121.

Subject as to said undivided interests to the restriction that they may not be transferred or assigned separately and apart from each other or from the apartment hereinabove described, and subject to the condition that said apartment and undivided interests cannot be separated from the Ground Lease mentioned above.

SUBJECT, HOWEVER, as to FIRST, SECOND and THIRD, and said right to use Kuleana I common elements, to the following:

1. The terms, covenants, conditions, easements, exceptions, reservations, restrictions, encumbrances, and provisions described in the said Condominium Map and the Declaration of Horizontal Property Regime and By-Laws attached thereto, as the same may be amended from time to time, and any rules and regulations adopted pursuant thereto.

2. To all exclusive and nonexclusive easements appurtenant to the common elements, the limited common elements, and all other apartments in said Kuleana I and Kuleana II Condominium Projects.

3. The terms, covenants, conditions and provisions of said Apartment Deed and Ground Lease.

LAND ON WHICH SAID KULEANA II PROJECT IS LOCATED:

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Grant Number 1166 to D. Baldwin, et al) situate, lying and being at Mahinahina, Island and County of Maui, State of Hawaii, and thus bounded and described:

Beginning at an iron pipe on sea wall, at southwest corner of this lot, and which bears 23,681.28 feet north and 5,371.65 feet west from government triangulation station "Laina", and running thence by true azimuths:

1.	168° 52'	195.11	feet along beach; thence
2.	169° 59'	186.94	feet along beach; thence
3.	209° 06'	138.89	feet along beach to northwest corner of this lot; thence
4.	289° 02'	294.65	feet to Government Road; thence
5.	19° 13'	189.44	feet along Government Road; thence
6.	19° 39'	278.88	feet along Government Road to southeast corner; thence
7.	108° 46'	126.71	feet to point of commencement and containing an area of 2.668 acres, or thereabouts.

SUBJECT, HOWEVER, to:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii, and shoreline setback line in accordance with county regulation and/or ordinance.
3. Declaration Pertaining to Merger of Increments I and II in a Condominium Project dated April 19, 1973, recorded in Liber 9123 at Page 121 (Note: Certificate of Compliance, a condition precedent to the effectuation of this merger is dated June 14, 1976 and recorded in Liber 11493 at Page 401).

TIME SHARING BY-LAWSTABLE OF CONTENTS

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TIME SHARING BY-LAWS

## ARTICLE I

GENERAL PROVISIONS

1. Governance; Association Office. The Association shall be governed by these By-Laws. The principal office of the Association shall be at such place in the State of Hawaii as the Board of Directors may designate from time to time.
2. Definitions. Unless expressly indicated to the contrary, the terms used herein shall have the following meanings:
  - (a) Declaration. The Declaration of Covenants, Conditions and Restrictions for Time Sharing Ownership by the Association, to which these By-Laws are attached, and all amendments thereto.
  - (b) Additional Terms. The balance of the terms defined in the Declaration shall have the same meaning when used in these By-Laws as when used in the Declaration.
3. Purpose. The Association has been formed for the purpose of exercising the powers and performing the duties of the Association set forth in these By-Laws and the Declaration.

## ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

1. Qualifications. Each Owner of a Time Share Ownership Estate, including the Declarant, shall be a Member of the Association If a Time Share Ownership Estate is owned by more than one Time Share Estate Owner all such Time Share Estate Owners shall be Members of the Association. Ownership of a Time Share Ownership Estate in the Property shall be the sole qualification for membership in the Association.
2. Transfer of Membership. The Association membership of each Time Share Estate Owner shall be appurtenant to the Time Share Ownership Estate giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of said Time Share Ownership Estate and then only to the transferee of said Time Share Ownership Estate. Any attempt to make a prohibited transfer shall be void. Any transfer of a Time Share Ownership Estate shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Time Share Estate Owner thereof.
3. Voting Rights. For the purposes of the representation of such Time Share Ownership Estate with regard to the affairs of the Association and the voting of the Members of the Association, each Unit Week in a Time Share Ownership Estate shall be entitled to a vote equal to the percentage undivided interest attributable to such Unit Week as set forth in Exhibit C

to this Declaration; provided that the actual percentage vote of each Time Interval Estate with respect to affairs of the Master Association shall be the net percentage undivided interest in the common elements of the Project attributable to such Time Interval Estate. Such vote shall be exercised and cast in accordance with the provisions of these By-Laws by the Member or Members having an interest in such Unit Week. When two or more persons hold such Estate, the vote for each such Unit Week shall be exercised as they among themselves determine, but in no event shall the eligible vote with respect to any Time Share Ownership Estate exceed the vote attributable to such Estate.

Whenever these By-Laws or the Declaration require the vote, assent or presence of a stated number of Time Share Estate Owners entitled to vote on a matter or at a meeting with regard to the taking of any action or any other matter whatsoever, the provisions of this Article II and paragraph 3 of Article IV shall govern as to the total number of available votes, the amount of votes an Owner is entitled to cast at the meeting, and the manner in which the vote attributable to a Unit Week having more than one Owner shall be cast.

4. **Joint Owner Disputes.** The vote, or votes, for each Unit Week may be cast only as a unit, and fractionalizing votes shall not be allowed. In the event that joint Time Share Estate Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a certain Unit Week, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Unit Week.

5. **Members' Rights and Duties.** Each Member shall have the rights, duties and obligations set forth in these By-Laws and the Declaration, as the same may be amended from time to time.

6. **Cumulative Voting.** In any election of the Board of Directors of the Association (the "Board"), the vote attributable to a Time Share Ownership Estate entitled to be cast in such election may be accumulated and given to one candidate, or divided among any number of candidates. The said attributable vote shall be an amount of votes equal to the number of directors to be elected multiplied by the number of Unit Weeks owned by the Owner entitled to cast such votes pursuant to the Declaration and these By-Laws. Subject to the provisions of Article VI, paragraph 1 hereof, the candidates receiving the highest number of votes, up to the number of Board members to be elected, shall be deemed elected.

### ARTICLE III

#### MEMBERSHIP ASSESSMENTS AND LIEN RIGHTS

1. **Membership Assessments.** Basic Assessments, Special Assessments and Personal Charges as provided for in the Declaration shall be paid by the Members of the Association at the time, in the manner and subject to the conditions and limitations set forth in the Declaration, and the Board shall fix, levy,

collect and enforce such assessments at the time, in the manner and subject to the limitations set forth in the Declaration.

2. Enforcement, Lien Rights. For the purpose of enforcing and collecting assessments, the Association shall have the lien rights set forth in the Declaration, which lien rights shall be enforceable by the Board in the manner set forth in the Declaration. The Board shall also have and be entitled to exercise all other rights and remedies set forth in the Declaration or otherwise provided for at law or in equity.

#### ARTICLE IV

##### MEMBERSHIP RIGHTS AND PRIVILEGES

1. Rights and Privileges of Members. No Members shall have the right without the prior approval of the Board, to exercise any of the powers or to perform any of the acts delegated to the Board by these By-Laws, or by the Declaration. Each Member shall have all of the rights and privileges including, but not limited to, property rights and rights to access over, and use and enjoyment of the Property, Common Furnishings, and Common Elements granted to the Members by these By-Laws and the Declaration subject to such limitations as may be imposed in accordance therewith.

2. Rules. Upon notice and hearing the Board may establish such rules, regulations and prerequisite conditions to the use of the Property, Common Elements, and Common Furnishings as it, in its sole discretion, deems appropriate, so long only as such rules, regulations and conditions do not materially abridge the rights of Members set forth in the Declaration, or conflict with the provisions of the Master Declaration or By-Laws or rules and regulations of the Master Association. Upon notice and hearing, the Board may establish rules, regulations, fees for and prerequisite conditions to the use of the Property, Common Elements and Common Furnishings by persons who are not Members, including Members' spouses or children living with such Member, and guests. All rules and regulations adopted pursuant to this paragraph 2 and pursuant to the Declaration (or by the Managing Agent pursuant to the Declaration) shall hereinafter be referred to as the "Rules and Regulations."

3. Suspension of Voting Rights. After the meeting of the Board as provided below, the Board shall have the right to suspend the voting rights of any Member or Members for the period during which any Assessment owed by such Member(s) remains unpaid and delinquent. The Board shall also have the right to suspend such voting rights for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations committed by any Time Share Estate Owner, his employees, guests, tenants, invitees or the members of his family; provided that any suspension of voting rights shall be made by the Board only after a meeting of the Board, at which a quorum of the Board is present, duly called and held for such purpose in the same manner as provided in these By-Laws for the noticing, calling and holding of a special meeting of the Board. Written notice of such meeting shall be given to the Member whose voting rights are being sought to be suspended at least ten (10) days prior to the holding of such meeting. Such notice shall be given in the manner provided in the Declaration



for giving notices to Owners. The Member whose voting rights are being sought to be suspended shall be entitled to appear at such meeting and present his case as to why voting rights should not be suspended. The decision as to whether such rights should be suspended shall be made by a majority of the members of the Board present at such meeting and shall be binding upon all Members of the Association. No action taken at such meeting shall be effective unless a quorum of the Board is present in person or by proxy.

## ARTICLE V

### MEETINGS OF MEMBERS

1. Place of Meeting. All meetings of the Members shall be at the Property or elsewhere as determined by the Board.

2. Annual Meetings/Organization Meeting of Members. The Annual meetings of Members shall be held on the third Monday of the month \_\_\_\_\_ of each year commencing with the year immediately following the year during which the organization meeting as hereinafter provided for is held. An organization meeting shall be held no later than one hundred eighty (180) days after recordation of the first Time Share Conveyance Document or Agreement of Sale for a Time Share Ownership Estate, provided eighty percent (80%) of the Unit Weeks in the Association have been so sold. If eighty percent (80%) of the Unit Weeks have not been sold within one year from such recordation, an annual meeting shall be called if the Owners of eighty percent (80%) of the Unit Weeks that have been sold so request. At the organization meeting, and at all subsequent annual meetings there shall be elected by secret written ballot of the Members a Board of Directors in accordance with the requirements of these By-Laws. The Members may also transact such other business of the Association as may properly come before them at such organization or annual meeting.

3. Special Meetings. Special meetings of Members, for any purpose or purposes whatsoever, may be called at any time by the President of the Association or by the Board, or by any two or more directors, or by Members representing twenty five percent (25%) or more of the total voting power of all Members; provided that no special meeting may be held or called prior to the organization meeting. Except in special cases where other express provision is made by statute, these By-Laws or the Declaration, notice of such special meeting shall be given in the same manner as for annual meetings and may be given by any person or persons entitled to call such meeting.

3A. Notices of Meetings. Written notice of the organization meeting and each annual or special meeting shall be given to each Member by the Secretary or, in the case of the organization meeting only, by the Declarant in the manner provided in the Declaration for giving of notice to Time Share Estate Owners. All such notices of any organization or annual meeting shall be sent to each Member not less than twenty (20) days and not more than sixty (60) days before such meeting, and shall specify the place, the day and the hour of such meeting, and the items on the agenda for such meeting. If any proxy which the Member receiving notice has executed and filed with the Board (at

the time such notice is given) is in favor of the Managing Agent or Board, such notice shall be accompanied by a statement of the rules set forth in Section 8 of this Article V.

4. Adjourned Meetings and Notices Thereof. Any membership meeting, organization, annual or special, whether or not a quorum is present, may be adjourned from time to time by the affirmative vote of a majority of the votes entitled to be cast and represented at such meeting in person or by proxy, but in the absence of a quorum, no other business may be transacted at any such meeting unless these By-Laws or the Declaration otherwise provides.

When any membership meeting, either organizational, annual or special, is adjourned for thirty (30) days or more, notice of the reconvening of the adjourned meeting shall be given as in the case of the original meeting so adjourned. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting, other than by an announcement at the meeting at which such adjournment is taken.

5. Quorum. The presence either in person or by proxy at a Members' meeting of Members representing and entitled to cast at least fifty percent (50%) of that amount of votes (the "Net Total Votes") which is equal to the difference between the total amount of votes in the Association (the "Total Votes") and the amount of votes as to which voting rights are suspended at the time of the subject meeting in accordance with these By-Laws, shall constitute a quorum for any action by the Members, unless a different requirement is imposed by these By-Laws or the Declaration, and decisions pursuant to vote of a majority of the Net Total Votes present at a meeting at which a quorum is present shall be binding on all Owners unless a different percentage is required by these By-Laws, the Declaration, or law. Subject to the provisions of Section 4 of this Article V and unless otherwise expressly authorized by these By-Laws or the Declaration, all action required or permitted to be taken by the Members may be taken only at duly called and properly noticed organization, annual or special meeting at which a quorum is present. The Members present at a duly called and held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members so that less than a quorum is present, and the Members then remaining and entitled to cast votes at such meeting shall constitute a quorum in connection with the conducting of such business prior to adjournment. If any meeting cannot be held because a quorum is not present, a majority of the Members present either in person or by proxy and entitled to vote, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called at which meeting the quorum requirement shall be twenty-five percent (25%) of the Net Total Votes.

6. Consent of Absentees. The transactions of any meeting of Members, either organization, annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote and not

present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof, or fails or refuses to either sign or object to the same within twenty (20) days after receipt of a request therefor from the Board. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Appearance at any meeting shall be a waiver of lack of notice by the person so appearing.

7. Action Without Meeting. Any action, which under the provisions of the law applicable to corporations incorporated in the State of Hawaii may be taken at a meeting of the Members, may be taken without a meeting if authorized by a writing signed by all of the Members who would be entitled to vote at a meeting for such purpose, and filed with the Secretary of the Association.

8. Proxies. To facilitate management and operation of the Property, each Member by accepting a Time Share Ownership Estate shall be deemed to have agreed thereby to execute and keep effective, and shall execute and keep effective, unless otherwise provided in the Declaration or these By-Laws, or unless otherwise required by a mortgagee of the Member's Time Share Ownership Estate, a proxy in favor of the Managing Agent, or, in the absence of any Managing Agent, in favor of the Board, in the form set forth in Exhibit One attached hereto. Whenever a Member is entitled to vote or execute consents, then the following rules shall be applicable: (a) the Member who gave said proxy to the Managing Agent or Board may choose to attend any meeting and exercise his vote in person or exercise his power of consent directly, in lieu of such proxy, which shall by such action be deemed ineffective as to such meeting or as to the particular matter for which consent is required; (b) the Member may indicate in writing to the Managing Agent or Board holding the proxy that the Member abstains from voting or either consenting or objecting to any question or matter upon which a vote or consent is to be taken; (c) the Member may execute a different proxy to a person other than the Managing Agent or Board for the purposes of such meeting or consent and may limit the proxy to such other person as the Member desires; (d) the said proxy executed in favor of the Managing Agent or Board shall be deemed valid for the meeting of which notice is given and any adjournment thereof or for the matter for which consent is required, unless the Member attends and exercises his vote in person, abstains from voting, consenting or objecting, or executes a different proxy, or exercises his power of consent directly as stated above; and (e) such attendance and exercise of his vote in person, or abstention, or execution of such a different proxy or exercise of power of consent directly, shall be in lieu of the proxy executed in favor of the Managing Agent or Board only for the specific meeting of which notice is given, or the specific matter for which consent is required, and the proxy to the Managing Agent or Board shall at all other times and for all other meetings or matters be deemed valid and in effect. Every proxy with respect to a meeting of Members shall be filed with the Secretary of the Association prior to the commencement of the meeting at which the proxy is to be exercised. Subject to the agreement of Members provided for in this Article V, Section 8, every proxy shall be revocable by the person granting it upon receipt by said Secretary of notice of revocation prior to the exercise thereof. Every proxy shall automatically

cease upon sale or conveyance by the person granting the proxy of his Time Share Ownership Estate.

9. Audit. The Members may require, by vote at the annual meeting of Members, a yearly audit of the Association books by a certified public accountant.

## ARTICLE VI

### BOARD OF DIRECTORS

1. Number, Qualifications, Term of Office. The affairs of the Association shall be managed by a Board of three (3) directors who shall be Members of the Association, provided that the Managing Agent or any resident manager of the Property shall not serve on the Board. At the organization meeting, the Members shall elect three (3) directors, two (2) of whom shall hold office for three (3) years; and one (1) of whom shall hold office for two (2) years. At each annual meeting of the Members thereafter, the Members shall elect a new Director to fill each vacancy created by the expiration of a prior Director's term of office. Such new Directors shall serve for a term of two (2) years or until the later election of their successors. Prior to the organization meeting, and thereafter until the Board is elected, the appointees of the Declarant shall serve as the Board. The number of Directors may be increased or decreased from time to time (but in no event shall be less than three (3)) by an amendment to these By-Laws by the Members as hereinafter provided in these By-Laws.

2. Removal and Vacancies. The entire Board or any individual director may be removed from office, with or without cause, at any annual or special meeting of the Members, duly called, noticed and held, at which a quorum is present, by a majority of the total votes present at such meeting either in person or by proxy, and entitled to vote, provided, however that unless the entire Board is removed, an individual director shall not be removed prior to the expiration of his term of office if the number of votes against his removal exceeds the quotient derived when the total number of votes present in person or by proxy at such meeting and entitled to vote is divided by one (1) plus the authorized number of directors. Vacancies in the Board may be filled by a majority of the remaining directors, or by the Members at a duly called special meeting, and each director so elected shall hold office until his successor is elected at an annual meeting of Members or at a special meeting duly called for that purpose. A vacancy or vacancies shall be deemed to exist in case of the death, resignation or removal of any director, or if the Members shall increase the authorized number of directors but shall fail at the meeting at which such increase is authorized or any adjournment thereof to elect the additional director so provided for, or in case the Members fail at any time to elect the full number of authorized directors. If the Board accepts the resignation of a director tendered to take effect at a future time, the Board shall have the power to elect a successor to take office when the resignation shall become effective.

3. Place of Meeting. All meetings of the Board shall be held at the Property or elsewhere as determined by the Board, provided that meetings of the Board may be held by

conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

4. Organization Meeting of the Board. Immediately following the organization meeting and each annual meeting of the Members, the Board shall hold a regular meeting, which shall be the annual Board meeting, at the same place, for the purpose of organization, election of officers and the transaction of other business. Notice of such annual meeting shall be given in a reasonable manner not later than 14 days, if practicable, prior thereto.

5. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called by written notice at any time by the President, or if he is absent or unable or refuses to act, by any Vice President or by any two directors.

Written notice of the time and place of special meetings and of the nature of any special business to be considered shall be given to each director at least seventy-two (72) hours prior to the scheduled time of such meeting and shall be delivered personally to the directors or sent to each director by letter or by telegram, charges prepaid, addressed to him either at his address as it is shown upon the records of the Association. In case such notice is mailed or telegraphed, it shall be deemed given and received twenty-four (24) hours after being so deposited in the United States mail or so delivered to the telegraph company in the State of Hawaii.

Whenever any director has been absent from any special meeting of the Board and notice of such meeting has been duly given to such director, an entry in the minutes to the effect that notice has been duly given shall be made.

6. Quorum Requirements, Waiver of Notice. The transaction of any business at any meeting of the Board, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice, if a quorum is present unless a quorum is expressly not required pursuant to these By-Laws, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the Association records and made a part of the minutes of the meeting.

7. Action Without Meeting. Any action required or permitted to be taken by the Board by law, or according to these By-Laws or the Declaration may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board, and shall have the same force and effect as a unanimous vote of such directors.

8. Quorum. A majority of the Board shall constitute a quorum thereof. Every act or decision done or made by a majority of the directors present at a meeting duly held at

which a quorum is present, in person or by proxy, shall be regarded as the act of the Board, unless the provisions of these By-Laws, the Declaration or law shall require or permit the particular action involved to be taken by the Board in some other manner.

9. Notice of Adjournment. Notice of adjournment of any directors' meeting, either regular or special, need not be given to absent directors, if the time and place are fixed at the meeting adjourned.

10. Adjournment. A quorum of the directors may adjourn any directors' meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the directors present at the directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

11. Open Meetings.

(a) Regular and special meetings of the Board shall be open to all Members of the Association provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board.

(b) The Board may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

12. Compensation. No director of the Association shall receive any salary or other compensation for services rendered as a director or officer of the Association. However, directors and officers shall be reimbursed for expenses incurred in connection with the business of the Association and authorized by the Board. Nothing herein shall preclude any director from serving the Association in any capacity other than as an officer or a director and receiving compensation therefor as authorized and approved by the Board. Any director receiving any special compensation for services in such other capacity shall be excluded from deliberations and voting by the Board relative to the authorization thereof and fixing compensation with regard thereto.

13. Executive Committee. The Board shall have the power to appoint an Executive Committee and to delegate to such Committee any of the powers and authority of the Board in the management of the business and affairs of the Association except the power to adopt, amend or repeal the By-Laws. The Executive Committee shall be composed of two (2) or more directors, one of whom shall also be the President.

14. Powers and Duties. Subject to the limitations of these By-Laws, the Declaration and the Hawaii Revised Statutes as to action required to be taken, authorized or approved by the Members of the Association, or a portion or percentage thereof, all Association powers and duties including those set forth in the

Declaration shall be exercised by, or under the authority of the Board, and the business and affairs of the Association shall be controlled by the Board, and the Board shall have the power to contract with a Managing Agent for operation of the Property and may delegate any of the Board's powers to such Managing Agent as the Board in its discretion sees fit. The Managing Agent may but need not be the Declarant or the managing agent for the Master Association. The Board or the Managing Agent shall keep an accurate and current list of members of the Association and their current addresses, at a place designated by the Board.

## ARTICLE VII

### OFFICERS

1. Enumeration of Officers. The officers of the Association shall be a President, Vice President, a Secretary, a Treasurer and such other officers as the Board may deem necessary. Any person may hold more than one office, provided that no one person may be both the President and Secretary of the Association. The President, Vice President and Secretary shall be members of the Board. No other officer need be a Member of the Association.

The initial officers shall be chosen by a majority vote of the directors at the first meeting of the Board, and thereafter, officers shall be removed or chosen at any subsequent meeting of the Board by a majority vote of the total number of directors on the Board. The Treasurer may be, but need not be a member of the Board.

3. Term. All officers shall hold office at the pleasure of the Board.

4. President. The President shall be the chief executive officer of the Association and shall, subject to the control of the Board, have supervision, direction and control of the business and affairs of the Association. He shall preside at all meetings of the Members and at all meetings of the Board. He shall be ex-officio a member of all standing committees, including the Executive Committee, if any, and shall have such powers and duties as may be prescribed by the Board or by these By-Laws.

5. Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting shall have all powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by these By-Laws.

6. Secretary. The Secretary shall keep or cause to be kept, a book of minutes at the principal office or such other place as the Board may order, of all meetings of directors and Members, in which there shall be recorded the time and place of holding, whether regular or special, and if special how authorized, the notice thereof given, the names of those persons present at the directors' meeting, the number of Members present or represented by Members' meetings and the proceedings thereof, including any resolutions of the Association or the Board.

The Secretary shall give, or cause to be given, notice of all meetings of the Members and of the Board required by the By-Laws or by law to be given (except that notice of the organization meeting may be given by the Declarant) and the Secretary shall have such other powers and perform such other duties as may be prescribed by the Board or the By-Laws.

7. Treasurer. The Treasurer shall keep and maintain, or cause to be kept or maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director. The Treasurer shall deposit all monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. He shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the By-Laws. The Board may delegate the performance of the foregoing duties, subject to supervision by the Treasurer, to a professional manager retained by the Association.

8. Compensation. Unless entitled thereto by Article VI, paragraph 12 of these By-Laws, and subject to the provisions thereof, no officer shall receive any compensation from the Association for Acting as such officer.

## ARTICLE VIII

### MORTGAGES

1. Notice to Board of Directors. A Time Share Estate Owner who mortgages his interest in the Property shall notify the Board of the name and address of his Mortgagee and within ten (10) days after the execution of the same shall file a conformed copy of the mortgage with the Board; the Board shall maintain such information in a book entitled "Mortgages of Time Share Ownership Estates".

2. Mortgagee's Rights. Notwithstanding anything in these By-Laws to the contrary, each Mortgagee shall have the following rights:

(A) Upon written request of the Mortgagee to the Board, the Mortgagee shall be entitled to all of the following:

(1) An annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association, the annual budget and schedule of assessments and such other statements or reports prepared for the Association, the Board, or the owners, by the Managing Agent or other party hereunder.

(2) The right to inspect the books and records of the Association during normal business hours; and



(3) Written notice of all meetings of the Association and the right to designate a representative to attend all such meetings.

(B) The Association, through the Managing Agent, or the Board, shall timely furnish a Mortgagee with the following: (i) notice of any default in obligations under the Declaration or By-Laws, Master Declaration and By-Laws, or Rules and Regulations thereunder, or Ground Lease, Apartment Lease, or ground lease portion of a Condominium Conveyance Document, if any, or any Time Share Conveyance Document or Agreement of Sale, by any mortgagor of such Mortgagee which is not cured within thirty (30) days after the giving of notice by the Board to the Mortgagor of the existence of the default; (ii) a copy of all pleadings filed in any lawsuit, administrative proceeding or other action affecting the Property or any portion hereof; (iii) a copy of any bond required to be posted before commencing or permitting construction of any improvements to the Property in which the Time Share Ownership Estate subject to such mortgage is established; and (iv) prior written notice of any proposal to encumber, sell or transfer the Common Furnishings or the Property as a whole.

(C) The Property shall not be partitioned or subdivided without the prior written consent of any Mortgagee of a Time Share Ownership Estate therein.

(D) Except as provided by law, the Property shall not by act or omission be abandoned or removed from Time Interval operation created by the Declaration without the prior written approval of all Mortgagees of Time Share Ownership Estates in the Property.

(E) In the event of (i) substantial damage to or destruction of any part of the Property or (ii) any portion of the Property being made the subject matter of any condemnation or eminent domain proceeding or otherwise being sought for acquisition by a condemning authority, the Board shall give timely written notice to all Mortgagees of Time Share Ownership Estates in the Property or any such damage or destruction or proceeding or proposed acquisition, as the case may be.

(F) In the event of (i) any distribution of insurance proceeds hereunder as a result of substantial damage to or destruction of, any part of the Property or (ii) any distribution of condemnation proceeds as a result of condemnation or eminent domain proceedings with respect to any part of the Property, any such distribution shall be made to the Owners and their respective Mortgagees, as their interests appear, and no Owner or other party shall be entitled to priority over the Mortgagee of Time Share Ownership Estate with respect to any such distribution to, or with respect to, such Time Share Ownership Estate; provided, that, nothing in this paragraph (F) shall be construed to deny to the Association the right to apply any such proceeds to the repair or replacement of damaged portions of the Property or to restore what remains of the Property after condemnation or taking by eminent domain of a part of the Property.

3. Mortgagee Approval. Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first

mortgage held) of owners of the Time Share Ownership Estates (other than the Declarant named in the Declaration to which these By-Laws are attached) have given their prior written approval, the Association shall not be entitled to:

(A) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Property as a whole.

(B) Use hazard insurance proceeds for losses to the Property or any part thereof for other than the repair, replacement or reconstruction of the same, except as otherwise provided by the Declaration, these By-Laws, the Master Declaration and By-Laws, or law.

4. Mortgagee Protection. Notwithstanding all other provisions hereof:

(A) The liens created pursuant to these By-Laws upon any Time Share Ownership Estate shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by any recorded mortgage of such Estate as provided in the Declaration; provided, however, that after the foreclosure of any such mortgage there may be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such Estate if falling due after the date such purchaser acquires title pursuant to such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided in the Declaration; and provided, further, that the unpaid share of common expenses or assessments which became due prior to such acquisition shall be deemed to be common expenses collectible from such purchaser and his successors and assigns, together with all the other Owners.

(B) No amendment to this paragraph 4 shall affect the rights of the holder of any such mortgage filed of record in the Bureau of Conveyances, or the Office of the Assistant Registrar of the Land Court, whichever is appropriate, prior to the filing of such amendment, who does not join in the execution thereof.

## ARTICLE IX

### MISCELLANEOUS

1. Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Association shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board.

2. Contracts, Etc. How Executed. The Board, except as otherwise provided in the By-Laws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances, but unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association

by a contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

3. Inspection of By-laws. The Association shall keep in its principal office the original or a copy of the By-Laws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members at all reasonable times during office hours.

4. Fiscal Year. The fiscal year of the Association shall terminate on December 31st of each year.

5. Books and Records. The books, records and papers of the Association shall be kept at the principal place of business of the Association, and shall at all times, during reasonable business hours, be subject to inspection by any Member. Copies of the Declaration and the By-Laws of the Association may also be purchased at a reasonable cost. The Board shall establish reasonable rules with respect to:

(a) Notice to be given to the custodian of records by the Members desiring to make the inspection.

(b) Hours and days of the week when such an inspection may be made.

(c) Payment of the cost of reproducing copies of documents requested by a Member.

Each Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

6. Conduct of Meetings. All meetings of the Association and the Board shall be conducted according to Roberts Rules of Order or other accepted rules for the conduct of such meetings.

7. Inspection of Minutes. The minutes of meetings of the Board and the Association shall be available for examination by Time Share Estate Owners at convenient hours at a place designated by the Board.

8. Severability. The provisions hereof shall be, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provisions hereof.

9. Liability Survives Termination of Membership. The termination of membership in the Association shall not relieve or release any Member who so terminates from any liability or obligations incurred under or in any way connected with the Property or time interval operation thereof during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.

## ARTICLE X

AMENDMENTS, CONFLICTS

1. Amendments. Subject to any requirement under Hawaii law that these By-Laws contain certain provisions, these By-Laws may be amended from time to time by vote or written assent of Members (including Declarant) holding seventy-five percent (75%) of the votes in the Association, and shall be evidenced by an Amendment to the Declaration duly recorded in the Bureau of Conveyances of the State of Hawaii, or if the Declaration is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, then duly filed in such Office. Amendments shall be kept by the Secretary with the other records and books of the Association and shall be effective upon the execution and recordation of such written instrument as required by this Section without any further action or requirement.

2. Conflicts. In the event of any inconsistency between these By-Laws and the Declaration, the Declaration shall control.

3. Restrictions and Prohibitions on Time Sharing. Notwithstanding any other provision herein, nothing herein or in the Declaration shall be deemed to require compliance with any restriction, invalidation, or prohibition on time sharing for the Property unless otherwise required by law.

IN WITNESS WHEREOF, the undersigned has executed and adopted these By-Laws on this 5th day of AUGUST, 1981.

TROPICAL INVESTMENTS COMPANY

By Fred Z. Oats  
Its GENERAL PARTNER

By [Signature]  
Its GENERAL PARTNER

## EXHIBIT ONE

PROXY

I, \_\_\_\_\_, the owner of a Time Share Ownership Estate including Unit Week(s) \_\_\_\_\_ in Apartment No. \_\_\_\_\_ of the Kuleana Condominium Project, appoint the Board of Directors of the Association of Owners of such Estates in the Apartment as my proxy to attend the meetings of the members of such Association (the "Association") and the Association of Apartment Owners of the Kuleana Condominium Project (the "Master Association") and any continuation or adjournment thereof, to represent, vote, execute, consent and otherwise act for me in the same manner and with the same effect as if I were personally present or personally acted; provided, however, that this Proxy shall be obtained and shall be effective and said appointee shall exercise my vote, in accordance with the provisions of Article V, Sections 3A and 8, of the Time Sharing By-Laws of the Association. I authorize my proxy to substitute any other person to act under this Proxy, revoke any substitution, and to file this Proxy and any substitution or revocation with the Association and the Master Association.

Dated: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

## EXHIBIT "C"

The following table designates each Unit Week which, together with its respective percentage interest in the Property shall be included in a Time Share Ownership Estate in the Property.

The first Unit Week begins at 3:00 p.m. on the first Friday in each year and terminates at 3:00 p.m. on the second Friday of that year. Unit Week No. 2 commences at 3:00 p.m. on such second Friday of each year, and so on, except that Unit Week No. 52 terminates at the commencement of Unit Week No. 1 in the next succeeding year and all Unit Weeks end and cease to recur at the same time as said Ground Lease shall expire or upon such earlier termination thereof as may occur. Check-in and check-out times shall be as set forth by the Association to allow for orderly transition, cleaning, repair and maintenance.

<u>Unit Week Number</u>	<u>Beginning Day of Unit Week</u>	<u>Percentage Interest</u>
1	First Friday in year	1.9539
2	Second Friday in year	1.9539
3	Third Friday in year	1.9539
4	Fourth Friday in year	1.9539
5	Fifth Friday in year	1.9539
6	Sixth Friday in year	1.9539
7	Seventh Friday in year	1.9539
8	Eighth Friday in year	1.9539
9	Ninth Friday in year	1.9539
10	Tenth Friday in year	1.9539
11	Eleventh Friday in year	1.9539
12	Twelfth Friday in year	1.9539
13	Thirteenth Friday in year	1.9539
14	Fourteenth Friday in year	1.9539
15	Fifteenth Friday in year	1.9539
16	Sixteenth Friday in year	1.9539
17	Seventeenth Friday in year	1.9539
18	Eighteenth Friday in year	1.9539
19	Nineteenth Friday in year	1.9539
20	Twentieth Friday in year	1.9539
* 21	Twenty-First Friday in year	None
22	Twenty-Second Friday in year	1.9539
23	Twenty-Third Friday in year	1.9539
24	Twenty-Fourth Friday in year	1.9539
25	Twenty-Fifth Friday in year	1.9539
26	Twenty-Sixth Friday in year	1.9539
27	Twenty-Seventh Friday in year	1.9539
28	Twenty-Eighth Friday in year	1.9539
29	Twenty-Ninth Friday in year	1.9539
30	Thirtieth Friday in year	1.9539
31	Thirty-First Friday in year	1.9539
32	Thirty-Second Friday in year	1.9539
33	Thirty-Third Friday in year	1.9539
34	Thirty-Fourth Friday in year	1.9539
35	Thirty-Fifth Friday in year	1.9539

<u>Unit Week Number</u>	<u>Beginning Day of Unit Week</u>	<u>Percentage Interest</u>
36	Thirty-Sixth Friday in year	1.9539
37	Thirty-Seventh Friday in year	1.9539
38	Thirty-Eighth Friday in year	1.9539
39	Thirty-Ninth Friday in year	1.9539
40	Fortieth Friday in year	1.9539
41	Forty-First Friday in year	1.9539
42	Forty-Second Friday in year	1.9539
43	Forty-Third Friday in year	1.9539
44	Forty-Fourth Friday in year	1.9539
45	Forty-Fifth Friday in year	1.9539
46	Forty-Sixth Friday in year	1.9539
47	Forty-Seventh Friday in year	1.9539
48	Forty-Eighth Friday in year	1.9539
49	Forty-Ninth Friday in year	1.9539
50	Fiftieth Friday in year	1.9539
51	Fifty-First Friday in year	1.9539
52	Fifty-Second Friday in year	<u>2.3050</u>
		<u>100.0000</u>

\*Unit Week No. 21 shall be a Service Period.

HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

RECORDATION REQUESTED BY:

Law Offices Of  
Sanford J. Langa  
Wailuku Townhouse Building  
Wailuku, Maui, Hawaii 96793

87-163321

07 OCT 27 P 1: 05  
21269 115

AFTER RECORDATION, RETURN TO:

Law Offices Of  
Sanford J. Langa  
Wailuku Townhouse Building  
Wailuku, Maui, Hawaii 96793

RETURN BY: MAIL  PICKUP

**Supplemental Declaration,  
to the  
Kuleana Club Interval Ownership Declaration of Covenants  
Annexing Apartment D-4**

LAW OFFICES, SANFORD J. LANGA, WAILUKU, MAUI, HAWAII

This Supplemental Declaration is made this September 21, 1987, by *Kuleana Club Association of Interval Owners*, a non-profit unincorporated association established and existing pursuant to that certain declaration of covenants recorded in the Bureau of Conveyances in Book 12023, at Page 546, hereinafter called the "Declarant".

The said declaration of covenants, known as *Kuleana Club Interval Ownership Declaration of Covenants, Conditions, and Restrictions*, dated February 11, 1977 (hereinafter called the "Declaration") describes certain property and submits said property to the plan of interval ownership therein defined. The owner of condominium apartment described in Exhibit "A", attached hereto, desires to submit to the Declaration said condominium apartment pursuant to the terms set forth in the Declaration.

NOW THEREFORE, Declarant hereby declares that the condominium apartment more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof (hereinafter called the "Real Property"), is hereby submitted and annexed to the Declaration and shall become "Annexation Property" as referred to in the Declaration, that there are no additional limitations, restrictions, covenants or conditions applicable to the Real Property and that the Real Property shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Declaration and any Supplemental Declarations thereto.

IN WITNESS WHEREOF, the Declarant has executed these presents the day and year first above written.

KULEANA CLUB INTERVAL OWNERS ASSOCIATION

by *Lynn S. Carter*  
Its President



STATE OF IDAHO }  
COUNTY OF } SS

On this 2 October, 1987, before me personally appeared Lynns Porter, to me personally known who being by me duly sworn, did say that she is the president of Kuleana Club Interval Owners Association, a non-profit unincorporated association, and that said instrument was signed ~~and sealed~~ in behalf of said association by authority of its board of directors, and the said officer acknowledged said instrument to be the free act and deed of said association, and said association has no seal. NP  
NP  
NP  
NP

Laura L. Humphrey  
Notary Public, in and for said county and state  
My commission expires: Great Lake County  
April, 1991 State of Idaho

LAW OFFICES, SANFORD J. LANGA, WAILUKU, MAUI, HAWAII

Exhibit "A"

ALL the premises comprising a portion of "The Kuleana II" project (herein called the "Project"), consisting of that certain parcel of land and the improvements thereon, situate at Mahinahina, Island and County of Maui, State of Hawaii, as described and established by the Declaration of Horizontal Property Regime, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 9131, Page 253, as amended (hereinafter called the "Declaration"), described as follows:

FIRST: Apartment No. D-4 of the project as shown on Condominium Map No. 277, for use as a dwelling and for such other uses as may be permitted by the Declaration.

TOGETHER with appurtenant nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support of said apartment; and in the other common elements for use according to their respective purposes; and in all other apartments of said building for support.

SUBJECT to easements for encroachments of any part of the common elements of the project now or hereafter existing thereon and for entry as may be necessary for the operation of the project or for making repair or replacement of any common elements as provided in the Declaration.

SECOND: An undivided 1 percent interest in all common elements of the project as established for said apartment by the Declaration, or such other percentage or fractional interest as may be hereafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof, subject to all easements appurtenant to any apartment of the project and to all encumbrances, exceptions and reservations noted in the Declaration and By-Laws and subject to all easements required for drainage, sewers and any utilities serving the project.

LAW OFFICES, SANFORD J. LANGA, WAILUKU, MAUI, HAWAII